



**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS**

REGULAR MEETING MINUTES

JANUARY 22, 2008

Members Present: Joe Rowe, Chair, Don Williams, Tom Clark
Members Absent: None
Staff Present: J. Justin Woods, Planning Director, Brenda Belmonte, ZBA Secretary
Others Present: Chris Dean, Marcia Hudock, Heather Hanson

Meeting called to order by the chair at 7:00pm

MINUTES

December 18, 2007 ZBA

Motion by Williams seconded by Clark to approve the minutes of December 18, 2007. Discussion, None, Motion Carries 3-0.

Rules of Procedure

No changes have been made from last year. **Motion by Clark, seconded by Williams to accept the rules of procedure, Discussion, None, Motion Carries 3-0.**

Rowe would like the board to consider how we proceed with business when an applicant has asked for a variance. He suggests the applicant be given adequate time to present their application and express their concerns. This would allow the board to capture more adequately what is being presented without interruption before closing the meeting for discussion among members. It is efficient for the applicant to present their full case first, before being interrupted with questions. The Planner suggests modifying the rules of procedure so that this would be consistently followed. **Motion by Williams, seconded by Clark to reconsider the vote. Discussion, None, Motion Carries 3-0.**

Motion by Clark, seconded by Williams to adopt the rules with the amendments, Discussion, None, Motion Carries 3-0.

Motion by Williams, seconded by Rowe to select Tom Clark as vice chair, Discussion, Clark accepts although he acknowledges he has little experience and will need assistance.
Motion Carries 3-0.

Authorization to Sign

Allows planner to sign documents and decisions once they are approved.

Motion by Rowe, seconded by Williams to give Planner authorization to sign, Discussion, None, Motion Carries 3-0.

New Business

Rhodes Variance Referral

This is being presented to the board members for review. It will need to go to the Planning Board for study and recommendation before being referred back to the ZBA. The requested variance is

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1
2 for relief of the 200-foot wide lot requirement. A hearing will be set for the following month.
3 The board refers this application to the Planning Board.
4

5 Application for ZBA alternate

6 The Board interviewed Heather Hanson. Rowe and Williams recommend Ms. Hanson to the
7 Town Board as the ZBA alternate.
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9 **Motion by Williams, seconded by Clark to adjourn at 7:40pm, Discussion, None, Motion**
10 **Carries 3-0, Meeting adjourned at 7:41pm.**
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TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
MARCH 25, 2008

Members Present: Joe Rowe, Chair, Don Williams, Tom Clark, Heather Hanson
Members Absent: Dick Seely, Harry King
Staff Present: J. Justin Woods, Planning Director, Brenda Belmonte, ZBA Secretary
Others Present: Steve Polzella, Interim Planning Director, Tom Dobrydney, Mike Smith, Marcia Hudock

Meeting called to order by the chair at 7:00pm noting members Dick Seely and Harry King were absent.

Minutes

January 2, 2008

Motion by Clark, seconded by Hanson to approve the minutes of January 2, 2008, Discussion, None, Motion Carries 4-0.

New Business

Rhodes Subdivision Variance

Rowe opened the Public Hearing at 7:00pm noting it was duly published in the Star Gazette.

James T. Rhodes, 25 River St., Big Flats stated it was a bit disheartening to know that this is a moot point and 'dead in the water', and wondered why that was the case. Rowe replied that he did not know why Rhodes felt that way and explained that this was the time to present his case to the board so they could make their decision.

Rhodes described the two proposed lots, saying they would be 24' and 30' shy respectively in width per town code. He feels however, the other five criteria are met "by a long shot" and he has presented copies of this to the board. Rhodes went on to say that in 1997 the 200ft frontage figure was instituted, and he questioned why it was set at 200 feet. He feels that is a high number for that area, and other parcels have needed variances that were granted. Rhodes went on to say that there are twenty-three (23) single family lots on Breed Hollow, and twelve (12) on Eachers Hollow that do not meet the requirements. The houses on the proposed subdivision would be conducive to the environment. He said he is not trying to build a strip club, just a couple of houses.

Tim Steed, from Hunt Engineers commented on the history of the site; it was a larger parcel that was subdivided into several 300ft lots years ago, not leaving much leeway for a subdivision to meet the current lot width requirements set in 1997. One of the lots that was subdivided in the early 90's is what Mr. Rhodes has purchased. There is sufficient space on the lots to meet all of the other zoning requirements, as well as on-site utilities. Steed feels one of the most important things is that the lot width is a minor request and will not take away from the character of the neighborhood. It would fit in well with the other homes and lots along Hibbard Road. There are

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two lots immediately adjacent that have lot widths less than 200ft. One is currently developed and the other has not been developed yet.

Rhodes said, again, this is why he is asking if 200' is the right number to be used 11 years after the 1997 requirements were put in place. Perhaps the number should now be less. He stated there has been a fair amount of nonconforming issues in that area, and it is unreasonable to deny the variance based on the frontage. Rhodes feels the remaining criteria are met, and met well. As a landowner he would not deny someone to build a house based on just a 17-foot shortage. Due to the number of nonconformities, he would hate to see an immediate "No", and feels the decision should be based on the lots in that area.

Polzella recommended that the board consider denying the area variance based on the criteria required. The applicant could achieve his goal using some other method to develop, for example by changing the current layout of the lots. By definition the hardship is self-created.

Tim Steed responded "from an engineering point of view"; the site is along the upper side of the road with relatively steeper grades. The entire lot is 11 acres, the proposal being to divide it into two 5.5-acre lots. To develop it differently would make it difficult to obtain access to a back lot due to the steep slopes. In a meeting with Justin Woods it was discussed that one alternative would be to construct a private road or a duplex. However, Steed and Rhodes feel that would change the character of the neighborhood. Also, a private road has to be built to town standards, which becomes economically excessive when you are looking at building only two homes. Therefore the alternatives in this instance would jeopardize the character of the neighborhood as well as being economically unreasonable.

Polzella noted that financial reasons should not be considered when making this decision.

Tom Collins, 680 Hibbard Road – Collins is not in favor of this development. He feels one of the houses built would set 'on top' of his lot. Once the further lot was developed it would set precedence for the lot next to his.

Chris Dean, of Hunt Engineers, said when this area was originally subdivided the person owned 77 acres, and at that time there was no lot width requirement. Dean purchased one 5.5-acre lot and a friend bought the other lot, also 5.5 acres. Dean stated he had no problem building a home on his lot and feels a 5.5 acre parcel is quite substantial in size to build a single family home on.

Public hearing closed at 7:20.

Clark questioned if this would come in front of the ZBA again if Rhodes were to resubmit it with a road change.

Polzella answered if the road was developed differently perhaps it would go through normal site plan review.

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ZONING BOARD OF APPEALS
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Rowe commented that the current nonconforming lots do not bear on this decision as they were previously grandfathered in. He then reviewed the criteria saying that based on staff discussion it could be developed a different way. As to whether the variance is substantial, over 10 or 15% is a large variance. Whether it was self-created – Rowe stated a risk is taken as to future zoning when the parcels are bought. Rhodes can put one house there, but he wants to put two. The zoning law width requirement is 200ft. Rowe's opinion is that three of the criteria (Numbers 2, 3, and 4) are not met and agrees with the staff recommendation. He recommends Rhodes speak with planning staff to see what perhaps could be developed.

Rhodes asked what would be needed for the lot in between to build.

Polzella said that applicant would be free to build as long as he met the code requirements.

Rhodes thanked the board for their time.

**Resolution ZBA-1-2008
Rhodes Subdivision
Variance Request Denied
Tax Parcel #47.00-1-49.4**

A public hearing on the above referenced applications was held by the Big Flats Zoning Board of Appeals on Tuesday, March 25, 2008. Present were ZBA Chair Joe Rowe, Don Williams, Tom Clark, Alternate Member Heather Hanson, Interim Planning Director, Stephen Polzella, Planning and Zoning Secretary Brenda Belmonte. The applicant, James T Rhodes 15 River Street, Big Flats, New York 14814 was also present.

Don Williams made, and Tom Clark seconded, a motion to DENY the Variance to allow the creation of two (2) residential building lots from one existing lot of 11 acres, which for tax purposes is known as Tax Parcel #47.00-1-49.4, with less than the required 200 feet of frontage because the applicant did not present a fact-based case that a variance should be granted.

The ZBA voted to approve the motion by a vote of 4 in favor to 0 against. Accordingly, the Area Variance is Denied.

Motion to deny the request for an area variance on the basis of the 200ft width lot requirement by Williams seconded by Clark, Discussion, None, Motion Carries 4-0.

Correspondence

Heather Hanson was approved as an alternate to the ZBA.

Letter from Harley Davidson – The applicant will be coming back to the Planning Board with a site plan after going to the Town Board to request a special use permit, and to the ZBA for variance.

Design Regulations – Once the video arrives, times will be set for the board members to review. This has been approved as qualified training.

1 J.Justin Woods's resignation letter.

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3 Members Comments

4 None

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6 **Motion to adjourn at 7:42pm by Clark, seconded by Hanson, Discussion, None, Motion**
7 **Carries 4-0.**

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9 **Meeting adjourned at 7:43pm**

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**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MINUTES OF APRIL 22, 2008**

**7:00 PM
REGULAR MEETING
BIG FLATS TOWN HALL
COURT ROOM**

Members Present: Joe Rowe, Chair, Don Williams, Harry King, Tom Clark, Dick Seely, Heather Hanson
Members Absent: None
Staff Present: Brenda Belmonte, ZBA Secretary
Others Present: Carolyn Welliver, Jerry Welliver, Stan Koziatek, Glenn Farr, John P. Mustico, Clay Ambrose, Jim Appier, Jamie Gensel, Len Kaner, Marcia Hudock, Alan Friedlander, Kevin Kodz, Mike Smith, Michael Watts, David Manchester, MaryAnn Balland

Vice Chair Clark opened the meeting at 7:05pm noting Joe Rowe was not yet present.

Minutes

March 25, 2008

Motion by Williams, seconded by Hanson, to approve the minutes of March 25, 2008, Discussion, None, Motion Carries 5-0.

Reports

Authorization to Sign- This is the same procedure used previously which authorizes the planning director to sign documents as complete.

New Business

Mike Smith Gravel Mining

Use Variance needs to be referred to the Planning Board for their review and recommendation, per Section 17.60.140 of the town code. Smith's previous application is over a year old, and therefore has expired. Smith explained all of the required individual studies that he has completed, and that he has received a mining permit from the DEC.

Motion by Seely, seconded by Williams, to refer the use variance to the Planning Board, Discussion, None, Motion Carries 5-0.

Chair Rowe arrived at 7:15pm

Harley Davidson Area Variance
Public Hearing

Chair Rowe opened the Public Hearing at 7:20pm, noting it had been duly published in the Star Gazette.

John Mustico, attorney for the applicant introduced himself along with Jamie Gensel of Fagan Engineers, and Kevin Kodz, the principal applicant.

Gensel presented an overview of the project. The applicant is proposing redevelopment of the existing Four Seasons building. Town Zoning law states a redevelopment of the site is allowed only if it were to exceed 50% of the assessed value. This project exceeds that significantly. The applicant is proposing to invest nearly \$3,000,000. The proposal is to tear down the existing metal buildings and rebuild to fit in with the character of the hamlet. An area variance is needed from the ZBA, and a special use permit is needed from the Town Board. The application would then require site plan approval from the Planning Board.

Attorney Reed stated it would be helpful for Gensel to address and answer the five variance questions at this time.

Gensel addressed each question.

1. *Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance.*

Gensel stated no, the applicant is proposing a more aesthetically pleasing building that would fit more in with the character of the neighborhood. All vehicles for sale would be stored inside the building.

2. *Whether the benefit sought by the applicant can be achieved by some method, which will be feasible for the applicant to pursue but would not require a variance.*

Gensel replied yes, they could always find a more in line method to achieve what they want to do. They could use the existing metal buildings and still maintain the nonconforming use. The applicant, however, wants to build a new structure, and improve the look of the building.

3. *Whether the requested area variance is substantial.*

Gensel answered this is substantial due to the three million dollar cost, so they do not meet this criteria.

4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*

Gensel said this should have less of an adverse impact due to moving vehicles being displayed outside only. Also, it would require higher standards for the sewer and stormwater systems.

5. *Whether an alleged difficulty is self-created.*

Gensel stated the difficulty is partially self-created and partially town created. They agree that they do not meet this criterion. Gensel explained that this is more of a specialty retail use.

Mustico clarified that the existing buildings would be completely removed. He went on to say that the self –creation criteria does not apply to this applicant. If they had owned the property, and

applied knowing it was not allowed, it would then be self-created. Currently the applicant does not have any ownership to the property.

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Chair Rowe asked to hear from those speaking in favor of the application:

Stan Koziattek, 202 Daniel Zenker Drive

Koziattek feels the town hamlet is perfect for this business as it would not create a big traffic flow. The town would be getting rid of an old building and would bring in a business that might have staying power. Although there are no guarantees this building has a very good chance of staying for years to come. Koziattek himself does not have a motorcycle, but he is a businessman, and feels it fits well.

Mike Watson, owner of Antique Revival, 26 N. Palmer Rd.

Watson believes the property tax alone would bring a considerable amount of money to the town each year. It will also help by employing local people. Travelers and upscale customers are key to keeping a business.

Chair Rowe asked to hear from anyone speaking against the application and there were none.

Public hearing closed at 7:30pm

Motion by Seely, seconded by Clark to close the public hearing, Discussion, None, Motion Carries 5-0.

Members Comments

Seely asked if Four Seasons was still in business. Reed said the building has ceased operations so has a year to continue the non-conforming use.

Seely referred to a prior decision pertaining to Rico's Pizza, which also had some concerns regarding the lot.

Reed stated that each application has to be treated as unique. The ZBA has the authority to supply administrative relief. To say a previous application was denied, so this should be denied also, does not apply. Reed went on to say you need to look at the circumstances of this application according to the five criteria presented.

Seely questioned whether Harley Davidson required certain standards. Kevin Kodz replied yes, they have design standards on minimum square footage, minimum storage capacity, and also must meet requirements on the look and feel of the building itself.

Clark commented it would be almost impossible to meet those standards with the current building, and Kodz agreed.

Williams asked if the proposed building would face Interstate 86.

Kodz said the entrance would face Maple Street, with the rear facing Exit 49 . He also noted that the proposal is for two buildings, however the second building, a race shop, may not be constructed.

Reed explained that if a second building were proposed, it would still be an existing non-conforming lot, and would require a site plan amendment and approval.

Rowe believes the difficulty is not self-created, as the applicant has not yet purchased the property. The amount of space proposed would not interfere with other places in the hamlet. The applicant's previous application had several adjoining property owners speaking against it. The present application has not received any negative comment. Rowe questioned how long the building had been vacant.

Reed replied it has been vacant since October 30, 2007.

King asked what the hours of operation would be.

Kodz stated it would be open seven days per week; Monday – Saturday the hours would be 9:00am to 5:00pm. Sunday hours will depend on business – they will not operate on Sundays if the business does not pick up.

Motion by Williams, seconded by King to approve the Harley Davidson area variance, Discussion, None, Motion Carries 5-0.

Members Comments

Clark commented that the annual April training held at Corning Community College was excellent.

The board discussed the Mike Smith Gravel Mining application. Attorney Reed stated the mining is not allowed because the proposed site is in the Conservation District. The permit Smith has received is from the state. The Zoning Board would be looking at it from a use variance point of view. Reed said Smith acknowledges the local law does not allow this. If the hardship is more than financial, the board needs to focus on that. The burden is on the applicant to prove.

Seely feels perhaps they should visit the site to make sure of the exact location.

Rowe said the Conservation District issue does not go away.

Reed agreed and said the town's zoning law prohibits Smith from going forward even though he has received state approval. Reed stressed the need to look at the criteria and get the exact facts.

Rowe commented that previously each board member was supplied a copy of the variance criteria questions to answer individually; they were addressed at the meeting and collected for the record. Secretary will supply individual forms for members to address criteria questions.

Motion by Seely, seconded by Clark to adjourn at 8:02, Discussion, None, Motion Carries 5-0.

Meeting adjourned at 8:03

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MINUTES OF MAY 27, 2008**

**7:00PM
REGULAR MEETING
BIG FLATS COMMUNITY CENTER
ROOM 'C'**

PRESENT: Tom Clark, Dick Seely, Joe Rowe, Harry King, Don Williams

ABSENT: Heather Hanson

STAFF: Stephen Polzella, Interim Planning Director, Brenda Belmonte, Planning Secretary

GUESTS: Mike Smith, Brayton Foster, Dave Bowers, Larry Williams, Sandy Williams, Jim Reese, Allen Colunio, Doug Wolf, Jeremy Bellinger, Rene Harvey, Mark W. Watts, Angela Piersimoni, Robert Lovejoy

MINUTES

April 22, 2008

The board agreed to table the approval of the April 22, 2008 minutes until the next meeting, noting the following needed correction:

Harley Davidson Variance – Page 2, paragraph 2 of the minutes referring to redevelopment being allowed if it were to *exceed 50% of the assessed value*.

REPORTS

Zoning Changes

Polzella stated the proposed zoning changes have been tabled by the Planning Board. They will be reviewed again at their next meeting June 3, 2008. If they do not report to the Town Board within 45 days, the Town Board can act alone. The county review has been sent back for local determination.

NEW BUSINESS

Harvey Area Variance – Public Hearing

Chair Rowe opened the Public Hearing at 7:00pm, noting it had been duly published in the Star Gazette.

Renee Harvey, applicant, stated they have several sheds to house things such as lawnmowers and snow blowers, and would like a building to accumulate things in one area to make it look better.

Polzella presented the staff review: The proposed structure would be within inches of the neighboring property line. Also, the code office has sent a notice to the ZBA noting there are what appear to be several violations of the property maintenance code as well as some fire code issues on the property. Staff recommends voting against the variance.

1 David Fitzmaurice, 1709 Daytona Court, Johnson City, TN – David is the son of neighboring
2 property owner, Gordon Fitzmaurice. He stated one building is already located on half of the
3 Fitzmaurice property. He has spent two weeks looking for the pins to the property, and feels they
4 have been buried. He objects to the proposed building and feels it should not be built.
5

6 Robert Lovejoy, 43 Hazelwood Ave., Elmira, NY – Lovejoy understands that in order to be
7 granted a variance of this type, the applicant needs to prove a hardship and he sees no hardship.
8 The property has 78 ft of frontage, and approximately 300ft on the west and east. Lovejoy feels
9 there is plenty of room in the rear. He also believes the proposed building would increase tension
10 between neighbors, as well as be overuse of the property. The owners knew of the setbacks when
11 purchasing the property, and he sees no hardship in the legal sense to be given the variance. He
12 has lived in the neighborhood on and off since 1951 and is aware of the character of the
13 neighborhood.
14

15 Ron Harvey, applicant, 116 Golden Glow Drive – Harvey said there was an existing foundation
16 located partially on the neighboring property. He tore it out to keep it on his property. Also, the
17 back yard is not buildable as it is all located in the flood zone.
18

19 Fitzmaurice feels there is no room for the proposed dimensions; it would be over the property line.
20 As of now, with the property pins removed, there is a dispute. The previous owners had a trash
21 heap on the property, which Fitzmaurice helped to bury. Over the years the trash has accumulated
22 again and he objects to that. He also objects to the existing building along the river, which is also
23 on his father's property.
24

25 Jim Reese, 104 Golden Glow Drive, Elmira, NY – Reese stated he has lived there for 61 years. He
26 feels if this building were built, the applicant would not even be able to put up a ladder to work on
27 it without it being on the neighboring property.
28

29 Larry Williams, 107 Golden Glow Drive, Elmira, NY – Is it pole barn or garage and how tall?
30

31 Lovejoy stated if a variance were to be granted, then the restriction would be only on height, and
32 how does one correctly engineer a pole barn attached to an existing house.
33

34 Rowe answered that would not be a question for this board.
35

36 Lovejoy believes this would open up a can of worms.
37

38 Public Hearing Closed at 7:12pm
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41 Polzella referred to Section 17.60.120 of the town code regarding an area variance – The
42 authorization of the ZBA would allow for use of a lot in a manner not allowed. The applicant must
43 meet all 5 criteria to be granted a variance. Polzella then reviewed each of the criteria.
44

45 Rowe asked Harvey if she was prepared to answer these questions.
46

47 Harvey replied no, not at this time.
48

49 Discussion - Seely feels that due to it being a high-density area, an approval would open up the
50 chance for future problems of the same nature and therefore set a precedence.
51

1 Clark commented there is no way to build a building two inches from a property line without being
2 on the neighboring property.

3
4 Rowe reviewed the 5 criteria questions:

- 5
6 1. *Whether an undesirable change will be produced in the character of the neighborhood, or a*
7 *detriment to nearby properties will be created by the granting of the area variance? Yes*
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9 2. *Whether the benefit sought by the applicant can be achieved by some method, which will be*
10 *feasible for the applicant to pursue but would not require a variance? Yes*
11
12 3. *Whether the requested area variance is substantial? Yes, very substantial.*
13
14 4. *Whether the proposed variance will have an adverse effect or impact on the physical or*
15 *environmental conditions in the neighborhood or district? Yes*
16
17 5. *Whether an alleged difficulty is self-created? Yes*
18

19 **Motion to deny by Seely, seconded by Williams, Discussion, None, Motion Carries 5-0.**

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21
22 Mike Smith Gravel Mining Public Hearing

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24 Chair Rowe opened the Public Hearing at 7:20pm noting it had been duly published in the Star
25 Gazette.

26
27 Brayton Foster, Consulting Geologist, 4442 Lower Covert Road, Trumansburg, NY - Foster
28 presented and reviewed a summary of comments to the board. He stated he is in favor of the
29 proposed mining, saying it is a good area, and the project is compatible with the area.

30
31 Robert Lovejoy, 43 Hazelwood Ave., Elmira, NY - Lovejoy supports this project. There are
32 limited areas to get topsoil and gravel in this area. He also agrees the impact would be minimal. It
33 would be nice to see more availability of these projects, and he is in full support of it.

34
35 Doug Wolf, 2898 State Route 352 - Often times the neighbors say "Not in my back yard" however,
36 this is in his back yard, and he sees no trouble at all with this use. Wolf said the town is growing in
37 a good way. We have a sense of rural and agricultural use in the area. He feels Smith has always
38 been cognizant of the environment; he has gone to no till and has limited the use of pesticides.
39 Smith is a careful steward of the environment. Wolf is a senior environmental engineer in
40 Corning, and sees this use as completely compatible. He sees no detriment to the character of the
41 neighborhood.

42
43 Jeremy Bellinger, 2744 State Route 352 – Bellinger has no qualms regarding the proposed mining
44 area. He agrees Smith is very cognizant of the area, and we should support him as well.

45
46 Frances Miles, 50 Roricks Glen Parkway, Elmira, NY – Miles questioned how it would affect their
47 land. Smith referred to a map showing the property lines. Miles questioned if the road would be
48 shared or entirely on Smith's property. She asked if the mining area would be behind the cornfield,
49 and Smith answered yes.

50
51 Polzella reviewed his staff report: – He referred to Page 233, Section L, of the town code stating
52 the intent of the Conservation District. Polzella said this application has been around for some

1 time, and he has reviewed the older documentation. There also have been some new documents
2 submitted. Staff has not had a very good chance to review all of the new studies mentioned by
3 Foster. It may be of best interest to table the decision until staff reviews the application further.
4 Polzella continued, saying use variances are generally denied, however the applicant should be
5 allowed to present his case. Polzella expressed his comments to the following criteria that the ZBA
6 needs to consider:

- 7
8 1. *That the property is incapable of earning a reasonable return on initial investment if used for*
9 *any of the allowed uses in the district (actual "dollars and cents" proof must be submitted);*

10 *Polzella stated that in some cases the ZBA has been known to require a full economic study.*

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13 2. *That the property is being affected by unique, or at least highly uncommon circumstances;*

14 *Being along the flood plain area, staff questions if this is unique.*

- 15
16
17 3. *That the variance, if granted, will not alter the essential character of the neighborhood;*

18 *A question to think about long and hard – whether it would alter the character of the*
19 *neighborhood.*

- 20
21
22 4. *That the hardship is not self-created.*

23 *This property has been in the family for a long time – however staff would comment Mr. Smith*
24 *inherited the property and nothing states you have to take an inheritance, so staff would argue*
25 *that there is nothing that says he would have to mine this area.*

26
27
28 Mark Watts, 564 Dry Run Rd., Pine City, NY – Watts is a member of the Farm Bureau. He stated
29 that many farmers have to diversify to keep their farms going. This would meet the need of the
30 community. You will need topsoil and gravel. Watts believes there will be no issues with dust and
31 gravel, and he does not feel it is self-created. He would hate to see another farm fail, or to
32 bankrupt Smith by doing further studies.

33
34 Mike Smith – Smith has gone long and hard on this study and spent thousands. He listed the uses
35 allowed in the Conservation District saying if he could do something else there.....

36 He is very conservative, and has tried to make a living on the farm. The flooding has caused him
37 great hardship. He has lost animals as late as 1996. He has tried strawberries and feels this will be
38 the last year for those. He has continued to try to diversify, and feels this would sustain his farm.
39 Smith owns two other houses, and has changed the operations four or five times there. It has been a
40 constant battle with the floods, which he feels is a hardship.

41
42 Seely commented that we have been getting plans in dribs and drabs.

43
44 Smith said the package has been presented to the planning staff.

45
46 Seely stated he knows this has dragged on, but wants to see a good complete package.

47
48 Public Hearing closed at 7:41pm.

49
50 Discussion; Rowe has not seen the criteria addressed by the applicant.

1 Polzella noted the planning staff report from 2006. Former planning director, Maureen Hardinge
2 addressed her consideration of the four criteria, where, in her opinion, only one of those criteria
3 was met and recommended denial at that time. Polzella, however, considers all four to fail.
4

5 Rowe stated again, we do not have sufficient documentation addressing the criteria. He explained
6 to Smith the need for each one to be answered. Rowe believes a few of the suggested uses could
7 be met, however he feels it is important for the board to take the time for review. He suggests this
8 be tabled until the board has sufficient information to make an informed decision.
9

10 **Motion by Seely, seconded by Williams to table the decision, with Seely noting it should be**
11 **brought in front of the board soon. Discussion; None, Motion Carries 5-0.**
12

13 Rowe commented that the hardship from the financial standpoint and the losses, he can understand,
14 however the documentation is required.
15

16 Polzella will review as quickly as possible. Hopefully the next meeting will render a decision.
17 Another public hearing will not be needed. The board will be able to act at the next meeting.
18
19

20 Allaire Area Variance

21 Polzella noted a recent subdivision by the Allaires. He explained the specific lot, stating it is
22 currently undevelopable. The Allaires would like to increase one of the guidelines in the code
23 making the front setback from 50' to approx 350'. This would allow for development on the
24 property.
25

26 Roger Allaire explained the previous boundary line adjustment, which created two conforming lots
27 out of two nonconforming lots. These are two individual issues. They are trying to sell the spoken
28 of lot as a buildable lot.
29

30 Polzella stated it would currently not be allowed. There is not a lot of room on the lot. The
31 proposed variance would make the front of the lot undevelopable. They could weave a new
32 driveway within a buildable envelope as shown by the planner. The variance would be to increase
33 the front setback. By increasing the front setback it would meet the criteria. The builder would
34 need to present documentation that he is building this lot. Any approved variance would go with
35 property and would not expire. Polzella recommends an approval although there is a lot of review
36 to do yet.
37

38 **Motion by Williams, seconded by Clark to refer this variance request to the planning board**
39 **Discussion; None, Motion Carries 5-0.**
40

41
42 MEMBERS COMMENTS
43

44 Clark would like to discuss use variance in the Conservation District. Mining is allowed in the
45 industrial area, however he does not feel we would like it there. He feels it should allowed in the
46 Conservation District. It is also currently located in the R1 District.
47

48 Rowe commented that, in the R1 District, it would have been grandfathered in. Moving forward,
49 we try our best to follow the code book.
50

51 Polzella stated mining is considered an industrial type practice.
52

1 Clark feels this wasn't looked at properly from the beginning.
2

3 Brayton Foster commented that the Conservation Zone is impacted by flood overlay, and there was
4 further discussion regarding flood plain management.
5

6 Seeley stated the granting of a use variance is very serious. Good documentation is required.
7
8

9 There was discussion brought about by the public as to whether the public hearing was scheduled
10 prematurely. When something is submitted, and a hearing is on record, the taxpayer expectation is
11 the reason it is scheduled is you have sufficient information submitted for review so that it can be
12 discussed in a reasonable manner. In this case, due to a part time planner, sufficient review has not
13 been made, and yet, an opinion was made that the criteria was not met.
14

15 Polzella replied that he did review it to an extent and feels he would generally deny it. This is the
16 second public hearing as there was one in 2006. Polzella feels the board should table it and not
17 act tonight.
18

19 Rowe believes the hearing was valuable for the applicant and the board. It is good for the new
20 ZBA members to hear the information. Rowe has looked at all the documentation and would also
21 have suggested tabling it. The issue is the request for a use variance – if we follow code as stated,
22 it would be denied. We are giving Smith a chance to submit more information for review.
23

24 **Motion by Seely seconded by King to adjourn at 8:13pm, Discussion, None, Motion Carried 5-0.**
25

26 Meeting adjourned at 8:14pm.
27
28
29

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 24, 2008

7:00PM
REGULAR MEETING
BIG FLATS TOWN HALL
COURT ROOM

PRESENT: Joe Rowe, Chair, Harry King, Richard Seely, Don Williams, Tom Clark,
Alternate Heather Hanson

ABSENT: None

STAFF: Stephen Polzella, Planning Director, Thomas Dobrydney, Planner, Brenda Belmonte,
Planning Secretary

GUESTS: Marcia Hoodock, Jim Ormiston, Jane King, Mike Smith, Anthony Pagano, Dave Bowers,
Brayton Foster, Roger Allaire, Annmarie Allaire, Justin McMaster, Ann Mortimer,
James Gensel, David Lubin

MINUTES

April 22, 2008

Motion by Williams, seconded by Clark, to approve the minutes of April 22, 2008, with corrections.
Discussion, None, Motion Carries 5-0.

May 27, 2008

Motion by Williams seconded by Clark to approve the minutes of May 27, 2008, Discussion,
None, Motion Carries 5-0.

OLD BUSINESS
RESOLUTION ZBA-5-2008
ALLAIRE AREA VARIANCE

PUBLIC HEARING:

Chair Rowe opened the Public Hearing at 7:00pm noting it had been duly published in the Star Gazette.

THOSE IN FAVOR:

Roger Allaire - He is here to answer any questions. He feels the submitted documentation will answer any questions and/or concerns.

Justin McMaster - McMaster intends to buy this lot and build a home there.

THOSE OPPOSED: None

Public Hearing Closed at 7:03pm

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 24, 2008

Resolution by: Seely
Seconded by: Williams

DISCUSSION:

Seely commented that he has known the Allaires for several years, however he feels he can make a decision without being biased.

Clark questioned the ability to put in a legal driveway.

Polzella said the lot is 55'7" wide. If granted, the variance would move the front setback to 300 feet. The side setback would be 30' and the rear 60'. Being that this is a 10-acre parcel, the lot would still be developable.

Rowe reviewed with the board the area variance criteria:

1. *Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance.* No
2. *Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.* No, the variance is needed to make the lot developable.
3. *Whether the requested area variance is substantial.* No
4. *Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district.* No
5. *Whether the alleged difficulty was self-created.* No, the lot has been nonconforming previous to 1997 when the code was initiated and was developable at the time it was purchased.

WHEREAS, this Board received a request for an Area Variance on May 23, 2008 and held a public hearing on June 24, 2008; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2008-13, made a favorable recommendation to the Zoning Board of Appeals; and

WHEREAS, this area variance will increase the minimum front setback of Tax Parcel # 46.00-3-26 to 300 feet; and

WHEREAS, this action would eliminate a non-conforming lot; and

WHEREAS, any land within the new setbacks of Tax Parcel # 46.00-3-26, front 300', side 30' and rear 60' will be the buildable area of the lot; and

WHEREAS, this board finds applicants answers to the five criteria for review to be justified; and

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 24, 2008

NOW, THEREFORE BE IT RESOLVED, to grant the Area Variance Request by Roger and Annmarie Allaire, 598 Owen Hollow Rd., Big Flats, NY 14814 to increase the minimum front setback of Tax Parcel ID # 46.00-3-26 to three hundred (300) feet.

CARRIED: **AYES:** Williams, King, Seely, Rowe, Clark
 NAYS: None
 ABSENT: None

Dated: Tuesday, June 24, 2008
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

RESOLUTION ZBA-6-2008
HAMPTON AREA VARIANCES
VARIANCE REQUESTS REFERRED TO PLANNING BOARD

Resolution by: Seely
Seconded by: Clark

WHEREAS, this Board received a request for two (2) Area Variances on May 16, 2008; and

WHEREAS, the Town of Big Flats Zoning Board of Appeals, BFZL 17.60.140, shall refer every request for area variance and use variance to the town planning board at least thirty (30) days prior to the scheduled hearing date; and

WHEREAS, the planning board shall report its recommendation to the zoning board of appeals at least five days prior to the hearing date; and

NOW, THEREFORE BE IT RESOLVED, to refer the Area Variance Requests by David Lubin to the Town of Big Flats Planning Board for recommendation.

CARRIED: **AYES:** Williams, King, Seely, Rowe, Clark
 NAYS: None
 ABSENT: None

Dated: Tuesday, June 24, 2008
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 24, 2008

RESOLUTION ZBA-7-2008
MIKE SMITH USE VARIANCE

Resolution by: Clark
Seconded by: Seely

WHEREAS, this Board received a request for a Use Variance on June 26, 2006 and held a public hearing on August 3, 2006; and

WHEREAS, this board tabled the decision upon request of the applicant pending further studies; and

WHEREAS, this Board received an updated request for a Use Variance on April 1, 2008 and held a public hearing on May 27, 2008; and

WHEREAS, this board tabled the decision upon consent of the applicant pending further staff review; and

WHEREAS, Town planning staff issued a staff report on June 11, 2008; and

WHEREAS, under local and state law no use variance shall be granted by the zoning board of appeals without a showing by the applicant of the requirements for the granting of such variance as detailed in Section 17.60.040 of the Town Code; and

WHEREAS, this board finds the first element regarding the lack of a reasonable return to fail based on the findings in the June 11, 2008 staff report which are hereby incorporated by reference herein and applicant's letter dated June 26, 2006 from Michael M. Smith stating an annual Total Return Profit calculation for corn of \$384.00; and

WHEREAS, this board finds the second element relating to the hardship as being unique to fail based upon not having demonstrated the necessary hardship as referenced above but assuming such alleged hardship exists the applicant fails to demonstrate with substantial factual basis that his property is unique compared to other properties in the district as such property relates to the alleged hardship submitted by the applicant; and

WHEREAS, this board finds the third element relating to the impact on the character of the district neighborhood to fail based on findings in the June 11, 2008 staff report; and

WHEREAS, this board finds the fourth element regarding self-creation to fail based on materials submitted; and

NOW, THEREFORE BE IT RESOLVED, the Board hereby grants the Use Variance Request by Michael M. Smith, 94 Sing Sing Rd, Horseheads, NY 14845 for a top soil and gravel mine at 2844 Route 352, Tax Parcel ID # 77.00-1-3 and 77.00-1-39.1.

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 24, 2008

1 **DENIED:**

2
3 **AYES:** Clark

4 **NAYS:** Williams, King, Seely, Rowe

5
6 Dated: Tuesday, June 24, 2008

7 BIG FLATS, NEW YORK

8 By order of the Zoning Board of Appeals of the Town of Big Flats

9 Joe Rowe

10 Chairman, Zoning Board of Appeals

11
12 Resolution by: Clark

13 Seconded by: Seely

14
15 **DISCUSSION:**

16
17 Rowe stated the Use Variance was tabled for further review at the previous meeting allowing staff to bring
18 it back for discussion.

19
20 **Motion to bring back for discussion by Seely, seconded by Williams, Discussion, None, Motion Carries 5-0.**

21
22 Rowe pointed out the public hearing had already been held.

23
24 Polzella explained that staff has further reviewed this and generated a staff report dated June 11, 2008. For
25 the record, staff was notified just today at 12:10pm that a packet was hand delivered to the members.
26 Polzella had advised Smith's attorney it would be at their discretion, however we do have deadlines, and
27 staff recommends this packet not be considered at tonight's meeting.

28
29 Clark disagrees, saying the information provided is what was requested last month.

30
31 Rowe commented that this was prepared by Mike Smith or someone representing him and does not present
32 enough information to be valid. This is one of the reasons it should have been submitted to the town before
33 coming to the board.

34
35 Clark said he received his copy last week.

36
37 Polzella stated again, staff recommends a denial. He believes the applicant fails all four criteria for review.

38
39 Rowe said the board members need to understand the data given to them. When asked that the applicant
40 look at each of the criteria and supply dated information, it does not describe what form it needs to be made
41 in, however the data does need to be supplied. This information is coming from the applicant, and in no
42 way can be proven accurate. If the board determines, Smith would have to hire someone outside of
43 himself; someone that the board could select. Any time you need additional information you want to get a
44 third party to provide that data. In this case we do not have that.

45
46 Clark asked what are we actually looking for to address each of the criteria. He feels some of them are
47 met.

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 24, 2008

1 Rowe explained that Smith stating the losses does not mean it actually happened. We want to make sure
2 that the data we have in front of us supports each criteria, and is not just a description coming from the
3 applicant. We have asked for that information for several months through staff. This is the applicant's
4 attempt to provide some of that, but not sufficient to supply what is needed.

5
6 Polzella also feels there is a bit of confusion on the criteria. Part of that is due to documentation from the
7 applicant being misconstrued, and not answered accurately.

- 8
9 1. Based on staff findings; a letter dated June 2006 states a \$384 profit was made on corn. The
10 transfer deed was \$1. Therefore a profit of \$383 was made. Another thing to consider is that the
11 applicant did these reports based on the 25 acres in question, not on the entire property. The
12 question pertains to the entire property, not just this little piece.
13
14 2. It is not necessarily the property that is unique, which appears to be what the applicant has
15 addressed. It is if the hardship is unique. Smith has failed to demonstrate it is unique as related to
16 other properties in the district. Staff finds this does not pass either. Rowe stated the golf course
17 has the same issue – it is not a problem unique to this one area. He agrees with staff that it is not
18 unique when you look at all the property in the area with the same issues.
19
20
21 3. The applicant has been arguing that his 25-acre mine may not be substantial to the entire district.
22 Staff however interprets that the use variance if granted, if everyone was granted the same use
23 variance, this would drastically change the district. Staff recommendation is that this one also
24 fails.
25 4. Again, based on materials submitted, staff feels this is self-created. The applicant knowingly took
26 over the property by inheritance or dollar deed. The applicant was member of the family farm for
27 years, knew how it was run, and probably grew up with several floods over the years.

28
29 Seely, referring to question three, asked what do you do with a piece of property like that? There are
30 many things allowed in the Conservation District that the applicant cannot do.

31
32 Polzella said the board could require a professional review. There are so many levels with all of these
33 questions. Who on this board can determine 100% that nothing else can be done on this area?

34
35 Williams stated if you have a very large piece of property, there will always be part of it that is less
36 valuable than other areas.

37
38 Polzella said again, after reviewing the 4 criteria, staff recommends denial.

39
40 King asked, since mining is not allowed in the Conservation District, would we be setting a precedence
41 if approved.

42
43 Polzella said it could be taken into consideration that it could set precedence.

44
45 Rowe said, if approved, the landowner would be authorized to use a piece of land that is not allowed in
46 the Town Law for the Conservation District. In order to grant that you need to keep in mind the way
47 the town code is written. It is written to read and apply those laws when a request comes to this board,
48 and you have to look at that very strongly. This has been ongoing for quite awhile. A key thing to keep
49 in mind is we are not experts to determine that this 25-acre piece of property cannot be developed by
50 these other activities.

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 24, 2008

Clark feels no one would want to invest in a flood plain.

Polzella stated our code has floodplain development regulations; another portion not supplied by the applicant. Staff feels none of the four criteria pass.

Clark commented that the applicant is trying to live there, pay his taxes, and trying to make a living. The town created this by adopting a code that does not allow mining in this district.

Dobrydney explained that Smith took legal ownership in 2005, after the code went into effect. We do have a deed on file showing it was transferred to the applicant's name in January 2005.

Polzella said should the board decide to grant this variance, they should also consider the conditions; site plan approval, special use permits, and what other steps would need to be taken.

Smith explained he has done a lot of studies on this. It has been a real hardship costing over \$30,000 for the study. Yes, he accepted the inheritance; he has lived there all his life. His is the last family-owned farm in Big Flats, and it has been there over 150 years. Smith believes it would be a shame to deny this request. He is ashamed that he would have to go through this again. Who would give up their family owned farm? Smith also feels the area is unique as it sits 3 to 4 feet below the golf course and you cannot put anything down there. The floodplain manger said you could not put anything down there. He is trying to diversify and gravel and topsoil are needed in this town. If there are any questions, he would love to answer them. It is such a hardship – if he has to have further studies done, he will do so.

Polzella stated that the documentation from Rodabaugh of DEC says the applicant *should* not build on this parcel rather than shall not.

Correspondence

Zoning Amendments have gone forward from the planning board. The Town Board will hold a public hearing tomorrow at 7:00pm public hearing at which time they can make action on.

A committee will be formed in July to begin a review on updating the code. It will consist of two planning board members, two zoning board members, and two members of the general public, along with MaryAnn Balland, Tom Reed, and Planning Staff. Overall changes will be formulated and presented later this year.

Also, new separate applications have been designed for subdivisions, site plans, and variances.

Motion by Williams, seconded by King to adjourn at 7:55pm, Discussion, None, Motion Carries 5-0. Meeting adjourned at 7:56 pm.

Joe Rowe

Chair, Zoning Board of Appeals -

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 22, 2008**

**7:00PM
REGULAR MEETING
BIG FLATS TOWN HALL
COURT ROOM**

PRESENT: Joe Rowe, Dick Seely, Don Williams, Harry King, Tom Clark

ABSENT: Heather Hanson

STAFF: Stephen Polzella, Planning Director, Brenda Belmonte, Planning Secretary

GUESTS: Jamie Gensel, David Lubin, MaryAnn Balland, Marcia Hudock

Chair Rowe called the meeting to order at 7:00pm noting alternate member Heather Hanson was absent.

MINUTES

June 24, 2008

**Motion by Seely, seconded by King, to approve the minutes of June 24, 2008, Discussion,
None, Motion Carries 5-0.**

REPORTS

None

OLD BUSINESS

**PUBLIC HEARING
HAMPTON INN
AREA VARIANCE – MINIMUM LOT AREA
TAX PARCEL #58.03-1-1.5**

Chair Rowe opened the Public Hearing at 7:01pm noting it had been duly published in the Star Gazette.

IN FAVOR:

Gensel made note of a letter sent by the applicant's attorney, Carl Hayden. The letter references the variance process, stating that he feels a variance is not needed in this case. This is a 2.818-acre parcel, with

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 22, 2008**

1 minimum lot size for this zone being 3 acres. The parcel was formed in the 70's before the current
2 requirements. This is a pre-existing non-conforming lot.

3
4 Gensel addressed the 5 criteria needed for an area variance.

- 5
6 1. Whether an undesirable change will be produced in the character of the neighborhood or
7 community or a detriment to nearby properties will be created by the granting of the area variance.
8 The 2.818-acre parcel would not change the character of the neighborhood. It would not exceed the
9 percentage of lot coverage and would be developed in a similar manner as the rest of the area.

- 10
11 2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the
12 applicant to pursue, other than an area variance. Roadways surround three of the sides, along with
13 the existing Hilton Garden Inn, with parking located close to the property line. There is no other
14 feasible way to build on this parcel.

- 15
16 3. Whether the requested area variance is substantial.
17 No, there is a 6% difference, so the applicant feels it is not substantial.

- 18
19 4. Whether the proposed area variance will have an adverse affect or impact on the physical or
20 environmental conditions in the neighborhood or district.
21 No, This parcel would be developed at a lower percentage rate of lot coverage than is allowed in the
22 BR zone.

- 23
24 5. Whether an alleged difficulty of compliance with this title was self-created.
25 No, this is a pre-existing parcel.

26
27 Polzella read the letter from attorney Hayden. The letter was hand delivered yesterday, July 21, 2008, and
28 explained their reasons for believing that no variances were needed. Polzella noted that the letter would be
29 documented as part of the official record.

30
31 David Lubin thanked the board for taking time to hear his proposal. He addressed Chair Rowe, saying he
32 tried to contact him personally. His desire was to contact all the board members to request they visit the
33 site, look around and see how it would impact the rest of the area. Rowe did not return his call, leaving
34 Lubin to believe he did not want to work directly with him; he respected Rowe's opinion, and therefore did
35 not contact the rest of the board. Lubin is not quite sure why he is here tonight. Nine years ago he had
36 several meetings with the Town Attorney, the Planning Board and Anne Clarke, the consultant for the
37 town. The same exact points being argued at tonight's meeting were argued at that time. The town
38 attorney has said the application should go through the Zoning Board of Appeals process. Lubin has not
39 seen any reason why it needs to go to the ZBA. He tried to have Dick Wardell write a letter of support.
40 Wardell supports it, but would need a few extra weeks to write a letter. Lubin hopes the board has visited
41 the site to see the existing building, and the other buildings in the area. The proposed building would be 42
42 feet high at the top of the habitable area, a third lower than the Hilton, and the same size as the Country Inn

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 22, 2008

1 and Suites. It is not out of character and will not have an impact visually. The building needs to be high to
2 make it easier for people from out of the area to see it and find it.

3
4 Seely asked if Lubin presently owned the property. Lubin does not own it at this time.

5
6 **AGAINST:** None

7
8 Chair Rowe closed the Public hearing at 7:13pm

9
10 **RESOLUTION ZBA-8-2008**
11 **HAMPTON INN AREA VARIANCE**
12 **MINIMUM LOT AREA**

13
14 Resolution by: Seely

15 Seconded by: Clark

16
17 **WHEREAS**, the Town of Big Flats Zoning Board of Appeals received a request for an Area
18 Variance on May 16, 2008 and held a public hearing on July 22, 2008; and

19
20 **WHEREAS**, the Town of Big Flats Planning Board, Resolution P-2008-16a, made a referral back
21 to this Board for their determination; and

22
23 **WHEREAS**, the Chemung County Planning Board made a referral back to this Board for local
24 determination; and

25
26 **WHEREAS**, the Town of Big Flats Planning Staff provided a staff report dated July 14, 2008;
27 and

28
29 **WHEREAS**, granting this area variance will reduce the minimum lot area of Tax Parcel # 58.03-1-1.5 to
30 2.818 acres; and

31
32 **WHEREAS**, on the basis of materials submitted by the applicant on July 11, 2008, this board
33 finds criteria #1, BFZL 17.60.120-B, to pass; and

34
35 **WHEREAS**, on the basis of materials submitted by the applicant on July 11, 2008, this board
36 finds criteria #2, BFZL 17.60.120-B, to pass; and

37
38 **WHEREAS**, on the basis of materials submitted by the applicant on July 11, 2008, this board
39 finds criteria #3, BFZL 17.60.120-B, to pass; and

40

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 22, 2008**

WHEREAS, on the basis of materials submitted by the applicant on July 11, 2008, this board finds criteria #4, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on July 11, 2008, this board finds criteria #5, BFZL 17.60.120-B, to fail; and

NOW, THEREFORE BE IT RESOLVED, to grant the Area Variance Request by David Lubin, 225 Colonial Dr., Horseheads, NY 14845 to reduce the minimum lot area of Tax Parcel # 58.03-1-1.5 to 2.818 acres under the following condition(s):

- The proposed project receives a negative declaration for SEQRA from the Town of Big Flats Planning Board as Lead Agency

FURTHER RESOLVED, for the purposes of SEQRA, this Board defers to the environmental review to be completed by the Lead Agency, the Town of Big Flats Planning Board.

CARRIED: **AYES:** Rowe, Seely, Williams, King, Clark
 NAYS: None

Dated: Tuesday, July 22, 2008
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Polzella reviewed the staff report. Staff's interpretation is quite different from that of the applicant's. Staff feels the variance is required – the language for a non-conforming lot refers to a lot held in ownership prior to 1997, when the changes were made. For anyone purchasing that property after 1997, an area variance for lot area would be required.

1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance.

Staff agrees with the applicant that this would not change the character of the neighborhood.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. Staff feels this could be achieved by some other method. One idea is to develop other lots that are conforming and already owned by the applicant.

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 22, 2008**

1 That would be more cost effective as there would not be a purchase price involved. This is just
2 one suggestion; staff feels there could be several other ways to pursue this application.
3

- 4 3. Whether the requested area variance is substantial.
5 Staff does not feel this is an issue, it is not substantial.
6

- 7 4. Whether the proposed area variance will have an adverse affect or impact on the physical or
8 environmental conditions in the neighborhood or district.
9

10 This particular variance would not have an adverse affect on the area, however, granting of the
11 variance will allow other sites to be developed by all applicants, not just by this owner. To grant
12 this variance would take two acres off the roles of green space in the town. From a green aspect,
13 the staff felt it was necessary to point this out.
14

- 15 5. Whether an alleged difficulty of compliance with this title was self-created.
16 As stated previously, this is a non-conforming lot not held in ownership by the applicant prior to
17 the current zoning requirements. The applicant intends to purchase it knowing a variance would be
18 required.
19

20 Rowe stated, for the record, he did receive a phone call from the applicant, and did not return the call. If
21 board members need to view a site, they do it individually or as a board. He reminded the board they had
22 the usual three options; table, approve, or deny.

23 Polzella pointed out that the applicant and his attorney would first like to know if the board believes this
24 variance is required.
25

26 Rowe said if the applicant had owned this parcel prior to the adoption of the local law he would not need a
27 variance. As this is not the case, it is clear a variance is required.
28

29 **Discussion –**
30

31 Polzella advised the board that the passing or failing of the criteria should be determined on the basis of the
32 materials submitted by the applicant.
33

34 Williams feels it is good for the town to keep these types of buildings in close proximity.
35

36 Seely commented on the traffic congestion with Simmons Rockwell in the same area.
37

38 Polzella explained there would presumably be a new interchange there shortly. It would be a shared cost
39 agreement between Simmons Rockwell and other developments in the area. The congestion will be
40 addressed by the Planning Board.
41
42

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 22, 2008**

Williams stated again, he feels it is a good utilization of the property. It is a non-conforming situation now. To utilize it and increase the density in the town is good.

Rowe pointed out that the question you want to answer is can it be achieved by a different way.

Clark commented that any applicant that buys the lot is going to need a variance.

Seely questioned Polzella's comments regarding an alternative method.

Polzella referred to the approximately 6 acres nearby that could potentially be developed.

Clark feels you will need to grant a variance sooner or later. The current owner is the only one that can build without a variance. Clark is sure the owner is tired of paying taxes on it.

Polzella said one option would be for the current owner to construct the hotel and sell it to Lubin. They would have that right of the non-conforming lot. Again, this is an area variance, not a use variance. If the board feels that one of the five criteria fail, it does not necessarily mean they have to vote against it. Staff feels that 2 or 3 of the criteria fail, but would concur if the board chose to grant this variance.

Clark feels it fits perfectly with the mall and restaurants in the area.

Once again the board reviewed the criteria with the findings that all but one, (self-created), passed.

Polzella pointed out the need to amend the motion, regardless of outcome, to have the Planning Board as lead agency and declare a negative declaration for SEQR. The ZBA defers the review to the Planning Board.

**PUBLIC HEARING
HAMPTON INN
AREA VARIANCE – MAXIMUM BUILDING HEIGHT
TAX PARCEL #58.03-1-1.5**

Chair Rowe opened the Public Hearing at 7:01pm noting it had been duly published in the Star Gazette.

IN FAVOR:

Gensel noted that the building height at the top of habitable area was 42 feet when first submitted. Architects have since revised the drawing, making it 40'9" of habitable space, just less than 6 feet of the maximum allowed. They are proposing 4 stories of habitable space up to the 40'9". The actual building is

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 22, 2008

1 higher than the habitable space. Section 17.16.07 of the town code refers to the limitations of non-
2 habitable structure height.

3
4 Gensel reviewed the 5 criteria needed for the area variance for maximum building height:

5
6 1. Whether an undesirable change will be produced in the character of the neighborhood or
7 community or a detriment to nearby properties will be created by the granting of the area variance.

8
9 Allowing this variance will allow for construction of an additional hotel next to one of greater height. The
10 existing Hilton is 61 feet. The total height would be 54 feet, which is shorter than the existing Hilton and is
11 in line with the Country Inn and Suites. The surrounding area is commercial. Gensel reviewed a list of
12 nearby businesses with total heights greater than 35 feet. This hotel would meet the character of the BR
13 (Business Regional) zone.

14
15 2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the
16 applicant to pursue, other than an area variance.

17
18 A shorter building with a different use could be developed on this lot, however the applicant's interest is to
19 build a hotel.

20
21 3. Whether the requested area variance is substantial.

22
23 This is not substantial considering the Hilton Garden Inn. Actually they are requesting as small as possible
24 height variance while still being allowed to build 4 stories.

25
26
27 4. Whether the proposed area variance will have an adverse affect or impact on the physical or
28 environmental conditions in the neighborhood or district.

29
30 No. Hotel traffic will generate a lot less traffic in the peak hour (5:00pm) than retail or a restaurant. They
31 receive their traffic throughout the day with no peak hour. Also, building upward instead of outward will
32 have less of an environmental impact.

33
34 5. Whether an alleged difficulty of compliance with this title was self-created.

35
36 There are good reasons to build in this location. Lubin operates both the existing Hilton and the Hampton,
37 therefore he would not have to build an additional restaurant. Also, Watkins Glen is building a new hotel,
38 and it would be nice to have something in this area to accommodate more people in Chemung County.

39
40 Lubin commented on the size, recalling when he was in front of the county planning board it was
41 recommended that perhaps the town should look at the 3-acre requirement. He has received letters from
42 each neighbor saying they do not oppose the size. Lubin feels he runs a very good business and sees this as

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
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1 an asset to the town. The Hilton has done a good job here and the Country Inn and Suites is also busy.
2 Business is increasing in the area, and he sees it as a good positive asset. He is surprised by the
3 controversy the town has. In re-reading the Planning Board minutes from 1999, all of these points were
4 raised. Dick Wardell had said if we do not like the laws we can always change them. The Hampton has
5 gone to the Horseheads Fire Department and they indicated there would be no problem. Fire protection
6 was brought up years ago. He received a letter from the Big Flats water board saying water was not a
7 problem. There is an approved sprinkler system in the Hilton now. Again, he is not sure what the issue is.
8 He feels it is good for the town. Sikorsky is expanding, and there is a need for more hotel rooms in the
9 town. Lubin has other land, but this is where he feels it fits best. He thinks these questions have been
10 answered before, but hopes for a positive result. It is Lubin's understanding that this is an independent
11 board. Polzella had said if this board wants to approve this, staff would go along with it. Staff does not
12 have any power over this board, and cannot be guiding or leading them. It would not be fair or legal.

13
14 Polzella noted, as Lubin had stated, several letters of support had come in, with an additional one from the
15 airport received today

16
17 **AGAINST:** None

18
19 Chair Rowe closed the Public Hearing at 7:47pm.

20
21 **RESOLUTION ZBA-9-2008**
22 **HAMPTON INN AREA VARIANCE**
23 **MAXIMUM BUILDING HEIGHT**

24
25 Resolution by: Williams

26 Seconded by: Seely

27
28 **WHEREAS**, the Town of Big Flats Zoning Board of Appeals received a request for an Area
29 Variance on May 16, 2008 and held a public hearing on July 22, 2008; and

30
31 **WHEREAS**, the Town of Big Flats Planning Board, Resolution P-2008-16b, made a referral back
32 to the Town of Big Flats Zoning Board of Appeals for their determination with recommendation
33 to the applicant to come prepared to the hearing with a visual impact study and an engineering
34 study for adequate fire protection; and

35
36 **WHEREAS**, the Chemung County Planning Board made a referral back to this Board for local
37 determination; and

38
39 **WHEREAS**, the Town of Big Flats Planning Staff provided a staff report dated July 14, 2008;
40 and

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WHEREAS, granting this area variance will increase the maximum building height of a proposed Hampton Inn on Tax Parcel # 58.03-1-1.5 to forty (40) feet, nine (9) inches; and

WHEREAS, on the basis of materials submitted by the applicant on July 11, 2008, this board finds criteria #1, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on July 11, 2008, this board finds criteria #2, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on July 11, 2008, this board finds criteria #3, BFZL 17.60.120-B, to fail; and

WHEREAS, on the basis of materials submitted by the applicant on July 11, 2008, this board finds criteria #4, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on July 11, 2008, this board finds criteria #5, BFZL 17.60.120-B, to fail; and

NOW, THEREFORE BE IT RESOLVED, to grant the Area Variance Request by David Lubin, 225 Colonial Dr., Horseheads, NY 14845 to, due to the location away from residential development, increase the maximum building height of a proposed Hampton Inn, on Tax Parcel # 58.03-1-1.5, to forty (40) feet, nine (9) inches, under the following condition(s):

- The proposed project receives a negative declaration for SEQRA from the Town of Big Flats Planning Board as Lead Agency
- Documentation from the Town of Big Flats DPW, stating an engineer has determined adequate water availability and pressures for fire protection at this location

FURTHER RESOLVED, for the purposes of SEQRA, this Board defers to the environmental review to be completed by the Lead Agency, the Town of Big Flats Planning Board.

CARRIED: **AYES:** Williams, King, Seely, Clark
 NAYS: Rowe

Dated: Tuesday, July 22, 2008
BIG FLATS, NEW YORK

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
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JULY 22, 2008**

1 By order of the Zoning Board of Appeals of the Town of Big Flats
2 Joe Rowe
3 Chairman, Zoning Board of Appeals
4
5

6 MaryAnn Balland addressed Lubin saying she hopes she misunderstood him. It distresses her when an
7 applicant comes in and says if you do not like the law you can change it. These laws were well thought out.
8 She appreciates the fact that he tried to contact the board, however if every applicant did that we would not
9 have anybody on the board. The rules are the rules, period.
10

11 Lubin feels he was misunderstood. When the Planning Board had previously discussed the height, Wardell
12 said if you do not like the height then you can change the rule. Now it is 9 years later, and the rule is still
13 the same.
14

15 Gensel explained that the previous records had said the Planning Board had the right to change the rule if
16 they chose to.
17

18 Polzella, clarifying a statement made by Lubin, feels staff does have the ability to offer suggestions. The
19 town has taken the liberty to hire two professional planners. If they had not, the board could decide to hire
20 a consultant for review. They are here as town staff to provide this review.
21

22 Seely stated the need to have all the information available for the board to consider. Ultimately the buck
23 stops here.
24
25

26 Polzella reminded the board that first they would need to decide whether this variance is required, or that
27 note 4 of the bulk and density section of the town code (pg. 250) is valid. In this case, it is in the BR
28 district, and it is a business or industrial use.
29

30 As to whether this would create an undesirable change, staff feels it may produce a safety hazard. The
31 board may want to request the applicant to provide documentation for fire protection. Not only by means
32 of equipment, which Lubin states he can provide, but also water availability and water pressure. The town
33 water department has notified staff that they are not engineers but they do have some concerns whether
34 water pressure is suitable for that elevation. That is why the town Planning Board recommended the
35 applicant provides an engineering report showing this.
36

37 Clark asked, are we saying we cannot protect the Hilton Garden Inn that already exists?
38

39 Polzella replied that the Hilton has an engineered sprinkler system. The Planning Board review requested
40 that the applicant provide that to prove that this system would work. What if they both caught on fire?
41 You never know what could happen.
42

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
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1 Rowe reiterated the fact that the Planning Board has requested this information prior to a conditional
2 approval. Based on the information presently before the board, it has not been supplied. The information
3 that is provided as conditional might not be approved; therefore, Rowe would not recommend a conditional
4 approval on this matter.

5
6 Polzella reminded the board they needed to consider the general public health, safety, and welfare before
7 deciding whether or not to grant this variance. It appears the applicant has supplied information to the
8 Planning Board, however the request was to supply it to this board. The Planning Board has no
9 determination over building height.

10
11 Staff believes this could be achieved by another method. They recommend an analysis be done before a
12 determination is made. Again, they have provided one idea of many. Staff has roughly calculated that the
13 applicant is using 54% of the 70% allowed in this zone, which means he could utilize a few more thousand
14 square feet. With a few additional footprint changes they could still accommodate the number of rooms
15 they are looking to get, and lower it to 3 stories. Square footage for parking would remain the same

16
17 Rowe noted the board could require an architect to address this and determine if that footprint could be
18 utilized. He explained that the existing hotels were not precedent, because the ZBA did not approve them.
19 The role of the ZBA is to look at the code, not at what the Planning Board has done in the past. That
20 interpretation clearly states this height is not within code. We may want to recommend the applicant do an
21 engineering study to determine if he can proceed within the code. The applicant has indicated a letter was
22 submitted regarding water as well as a letter from the fire department. Rowe stated he has not seen
23 anything in writing. The board needs to look at the documentation in front of them at the present time.

24
25 Gensel asked if the board had the letter from the fire company, and Lubin asked about a letter from the
26 airport.

27
28 The board had received a letter from the airport; however, they have not seen a letter from the fire
29 company.

30
31 Rowe stated the airport letter does not speak to the architectural or engineering studies.

32
33 Polzella told the board that everything submitted by the applicant on July 11, 2008 was included in their
34 packets. The only submission from Town and Country Fire Department is from back in 2000 in a letter
35 from Fagan Engineers.

36
37 Gensel stated he had a letter from Mr. Cowell, the Fire Chief for Town and Country.

38
39 Polzella suggested he conclude the staff report first.
40

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
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1 As to whether this is substantial; this is a board decision. It is about 20% over code. Staff feeling is there is
2 already the existing large Hilton, and adding another large building could have an impact. Staff also feels
3 this is a definitely self-created issue.

4
5 Rowe stated the fire department information is coming from Fagan, and not directly from the fire
6 department.

7
8 Gensel believes the board can receive information until today from outside agencies and asked if that was
9 correct. He said if the board does not submit this into the record, they will be missing a big piece.
10 Something can actually still be submitted tonight. Public comment can be submitted via a letter through
11 tonight, correct?

12
13 Polzella said yes, during the public hearing.

14
15 Gensel stated he thought the board already had it, so he did not feel it needed to be re-read.

16
17 Lubin said it is a simple letter; nevertheless it is directly from the fire department.

18
19 Staff is concerned about the letter, which addresses equipment only. There is more to it than just having a
20 ladder capable of reaching that height.

21
22 Clark feels if the fire department has protection for the existing Hilton, they surely will have protection for
23 this building.

24
25 Polzella replied that is Clark's opinion. When the applicant signs his application he agrees to any
26 engineering studies we may require.

27
28 Polzella advised Lubin he could hire an attorney if he felt he was being mistreated.

29
30 Jamie presented the letter from Fire Chief Cowell to the board.

31
32 Seely said this addresses the equipment, but not the water.

33
34 Polzella agreed, saying that is why staff and the Planning Board recommended an engineering study to be
35 conducted stating what needed to be done to be adequate.

36
37 Clark asked the applicant if there would be an outside sprinkler set up where the fire department hooks up
38 to the sprinkler system, to which Gensel responded yes.

39
40 Clark feels that takes care of the water problem.

41

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
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JULY 22, 2008**

1 Polzella stated once again, he is not an engineer. If Clark is an engineer and can make that statement, then
2 go ahead.

3
4 Clark replied, as a fireman he is making that statement.

5
6 Rowe responded that Clark might be a fireman; however there have been many cases where there was not
7 adequate water support based on machinery and pressure coming from a hydrant, and lives were lost. The
8 letter talks about a ladder. This board has asked questions way beyond a ladder. It is not unreasonable,
9 with the mass amount of structures in that area, to ensure you have adequate protection. This is not a
10 decision that should be taken lightly.

11
12 Polzella explained that part of his job as a professional planner is to think ahead, look into the future, and
13 plan. What if someone else owns it – what if an airplane crashes into both hotels – would there be enough
14 fire protection for both hotels?

15
16 Clark feels that is why you have mutual aid, and named the surrounding fire stations.

17
18 Polzella is not questioning the number of fire fighters available. What if they lose their water pressure
19 when fighting the fire?

20
21 Clark addressed Balland, saying the water board better start building bigger lines.

22
23 Rowe said we do not know. Before making a motion, Rowe would like the board to think about the issues
24 that have been raised. The information requested by the Planning Board has not been provided. We are
25 here to enforce the code. If denied, the applicant could come back and fully resubmit. It would be difficult
26 to make a call based on providing the documentation required. Perhaps the documentation would not be
27 acceptable.

28
29 Seely stated we are being asked to consider a variance for height – there are a lot of other questions. What
30 are the options if we were to disapprove until the resubmission, or can we approve with conditions?

31
32 Clark feels if we do not have enough water to fight that building, then we do not have enough water to
33 fight the mall, and he is sure that is not an issue. There should be enough water to fight any of those major
34 buildings.

35
36 Polzella said the key word is ‘should’ be.

37
38 Clark said if there isn’t the town better start building some. He personally does not believe water is an
39 issue.

40
41 Polzella explained the board could approve with some conditions, but should take some time to decide
42 what those conditions are. Also, staff has suggested it could be laid out a different way without the need

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
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1 for a variance. There is nothing that says this exact parking and footprint layout has to stay. It could be a
2 whole new design. This should also be taken into consideration.

3
4 Rowe stated they are asking for 20% height as a variance. Anytime we have looked at a variance we must
5 keep in mind what is significant. We need to ask what is significant.

6
7 Polzella reiterated the need to think about each criterion individually, based on the materials submitted by
8 the applicant.

9
10 Clark feels this would not affect the character of the neighborhood. The Hilton is there, along with another
11 hotel down the road, and other large buildings in that area.

12
13 Rowe explained that part of the problem is these buildings were approved outside of the Zoning Board.
14 The height included the non-habitable space. He does not know what the true height would be if the peaks,
15 etc. were removed. There is not sufficient data to answer that. For example Sears, at 40 ft high, how much
16 space is added on the roof? We do not know.

17
18 Seely said it does not change the character of the area, to which Rowe agreed.

19
20 Polzella reminded everyone in attendance that this is not a Planning Board meeting, and should be
21 considered similar to a courtroom. Once the public hearing is over with, consider this a judiciary board
22 and ask to speak.

23
24 Rowe agreed, and asked that no comments be made unless they are asked for. Do we have adequate
25 documentation in regard to the means of protection in water availability, water pressure, and equipment?
26 We need to address the documentation officially submitted. One fire department states they have a ladder.
27 He does not see the issue of adequate water or water pressure resolved.

28
29 Clark said we are protecting the mall and the Hilton. This is just another building. If you are protecting
30 those buildings you have adequate water supply to protect this building, or something is wrong with this
31 town.

32
33 Rowe said he would like to find that out now, rather than after a fire happens.

34
35 Clark said, you already know that or you would not have these buildings. Clark feels Balland should be
36 able to answer that question.

37
38 Rowe said it makes him very concerned that the Town Planning Board has raised that question. They have
39 more information than this board. Do we have the right water pressure and availability there – they raised
40 the question.

41

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
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JULY 22, 2008**

1 Clark again said the town should be able to answer that question. They are protecting the mall and all of
2 these other buildings right now.

3
4 Rowe reiterated that the Planning Board did ask the question.

5
6 Polzella explained that the town water department said they are not engineers, so could not answer that
7 question.

8
9 Clark believes we do have adequate protection. He believes the board is bringing up a subject that should
10 not even be considered. How are we protecting the mall and Consumer Square? If we do not, then there is
11 something wrong with the fire department and the town. To him this is a non-issue.

12
13 Polzella replied that is Clark's opinion, to which Rowe agreed. The intent of the Town Code is to protect
14 the general safety and well being of the public.

15
16 Rowe said the applicant was asked to provide this information by the Planning Board, and was given
17 adequate time to do so.

18
19 Polzella said the question that needs to be addressed is whether it would create a detriment to nearby
20 properties.

21
22 Rowe is concerned that the the water board could not say yes to the question raised by the Planning Board.

23
24 Polzella noted that fire protection was considered as part of the Planning Board review. When an
25 application is submitted, planning staff meets with Larry Wagner from DPW and Jay Boudreau, from the
26 water department. Boudreau said he could not answer that question. An engineer would have to make that
27 determination. The Planning Board then decided the applicant should come to the ZBA prepared to show
28 that water and fire protection is adequate.

29
30 Clark asked Polzella whose responsibility it would be to replace it if it was not adequate. Clark feels it is
31 the town's responsibility – residents pay fire taxes for that protection.

32
33 Polzella repeated once again, that is Clark's opinion.

34
35 Rowe said we are asking to verify that it is adequate, we are not saying to make it adequate. They are two
36 different things.

37
38 Clark thinks we should ask the town. It is not the applicant's responsibility.

39
40 Seely feels we experience this with every variance. We do not have all of the information needed. In the
41 past, we had a lot of information and we were able to make a decision.

42

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 22, 2008

1 Rowe stated that in the past we have tabled the proposal to give the applicant time to provide the
2 documentation. He is concerned with approving with conditions because these are the type of conditions
3 that need to be brought back for review. You need to evaluate that information, and we would not have the
4 chance to do this with approval. It is better to table it and have the information before an approval. Part of
5 what is affecting this is what has happened in the past.

6
7 Polzella agreed, saying the records from the past show those buildings were approved on the basis of just a
8 letter similar to what we have here.

9
10 Rowe stated this is a difficult one – is it a detriment to health and safety? Rowe is raising the fact that at
11 this point the Planning Board and Water Board have both questioned what they are supposed to be
12 providing, and he wants the question answered.

13
14 Polzella noted the board had the option to table it for the applicant to come back with the requirements.

15
16 Rowe asked if the board would consider a 20% increase in height substantial.

17
18 Polzella said it was a little bit less than 20%.

19
20 Seely stated we already have two non-conforming issues there; the Hilton and Country Inn and Suites, and
21 he feels precedence has already been set.

22
23 Rowe said precedence has not been set by the ZBA. Other applicants have requested a variance and were
24 not approved because there were non-conforming issues.

25
26 Seely noted they were approved before the town code went into effect.

27
28 Rowe said there have been other applicants whose variance was not approved due to non-conforming
29 issues. What have been approved are those around 1, 5, or 6% difference, not something tangible. 18% is
30 substantial. That is one of the things we have to consider.

31
32 Seely feels the possibility of reducing the structure may require another variance. If it were not feasible,
33 maybe he would look at the requested variance of height in a different light.

34
35 Rowe replied, yes, stating the point is whether or not we ask for that layout to be looked at. When the gas
36 station was approved previously, the board looked at how it could be laid out differently without a
37 variance. Do we want the option to be looked at before granting a variance? It could be documented that a
38 study was done showing that laying it out a certain way was not feasible. The board looked at the benefit to
39 the applicant, the character and detriment, and whether it was the reasonable thing to do. Rowe feels it is
40 reasonable to ask the applicant to provide such information. An architect is needed to build the structure so
41 would be available to the applicant already.

42

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
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1 Gensel said the applicant does not want to build anything less than 4 stories.
2

3 Rowe replied that has no impact on the law. There are many things that come before the board that people
4 do or do not want to do. That has no bearing on the code. It may be feasible to build a 3-story building on
5 that property while still getting the 100 rooms in that space.
6

7 Gensel stated if it could be done, they would not be in front of this board for a variance. They had actually
8 looked at higher, but came up with this. He would like the board to vote on what is before them.
9

10 Rowe reiterated that the board has to decide based on what is in front of them. It may be feasible to build a
11 3-story on this property, still getting the 100 rooms in the area.
12

13 Lubin stated they have looked at the alternatives, and this is the best. They did not submit what they did
14 not think would work, but what they thought was conducive to the area.
15

16 Rowe requested to hear from each of the board members. He reminded them the board could approve, deny
17 or table for more information. In approving, the board's main responsibility is to look at the code, which is
18 35 ft. and whether or not that variance would be substantial. Denying it has the applicant resubmitting.
19 Tabling has the applicant supplying more information, and allows time for that information to be reviewed.
20

21 Williams asked if the applicant submitted the proper documents to the Planning Board for proper fire
22 prevention, and asked if he would be allowed to present it now. He is looking for the documentation to the
23 Planning Board saying it has adequate fire protection. Having the proper equipment is not the problem.
24

25 Clark feels the town should supply that information.
26

27 Gensel read the letter regarding fire protection.
28

29 Rowe said the town was asking for documentation from the Water Board relevant to water pressure.
30 Gensel has read is his own response in writing; he provided a letter saying they have a ladder. That letter
31 should have addressed the water pressure and the availability of water.
32

33 Seely noted they would need to go through a test conducted by the town with ISO. If that test fails the
34 applicant could not receive a certificate of occupancy. He does not believe it is an issue.
35

36 Rowe is not questioning the inspection of it. He wants to ensure that it is adequate. This is not saying it
37 would not be inspected. Even if documentation is presented, inspections will be required.
38

39 Polzella said the town water department would not say there is enough pressure.
40

41 Clark feels the water is a non-issue.
42

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 22, 2008**

1 Chair Rowe requested a role call addressing the 5 criteria.
2

- 3 1. Passes 5-0
4 2. Passes 4-1
5 3. Fails 4-1
6 4. Passes 5-0
7 5. Fails 5-0
8

9 Rowe asked about the requested visual impact.

10
11 Polzella said the applicant provided a form and some images.
12

13 Rowe replied, "So they didn't do it."
14

15 Polzella feels there is no need to table the proposal based on the response to the five criteria. He feels the
16 board should either grant or deny.
17

18 Rowe reminded the board they need to keep out of what has happened in the past with the Planning Board,
19 prior to having the Zoning Board of Appeals. Would the ZBA have approved those? He believes not – a
20 variance for "30-something" feet would not have been approved according to code.
21

22 Rowe explained that he views this as being substantial, and feels that the Planning Board was incorrec in
23 the past. Until it is amended, his interpretation of the code is that 17% is substantial. We need to follow
24 the code and support what it says, even if it does not support the applicant.
25

26
27 **NEW BUSINESS**
28

29
30 **RESOLUTION ZBA-10-2008**
31 **SIKORSKY AREA VARIANCE REQUEST**
32

33 Resolution by: Rowe
34 Seconded by: Williams
35

36 **WHEREAS**, this Board received a request for an Area Variance on July 3, 2008; and
37

38 **WHEREAS**, the Town of Big Flats Zoning Board of Appeals, BFZL 17.60.140, shall refer every
39 request for area variance and use variance to the town planning board at least thirty (30) days prior
40 to the scheduled hearing date; and
41

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
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JULY 22, 2008

WHEREAS, New York State General Municipal Law Section 239-m municipal boards to refer certain planning actions to the County Planning Board for review before taking final action; and

WHEREAS, the planning board shall report its recommendation to the zoning board of appeals at least five days prior to the hearing date; and

NOW, THEREFORE BE IT RESOLVED, to refer the Area Variance Request by the Chemung County IDA to the Town of Big Flats Planning Board an the Chemung County Planning Board for recommendations.

CARRIED: **AYES:** Rowe, Seely, Williams, King, Clark
 NAYS: None

Dated: Tuesday, July 22, 2008
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

MEMBERS COMMENTS

CORRESPONDENCE
Recent Minutes

Motion by Seely, seconded by King, to adjourn at 9:40pm, Discussion, None, Motion Carries 5-0. Meeting adjourned at 9:41pm.

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
AUGUST 26, 2008**

**7:00PM
REGULAR MEETING
BIG FLATS TOWN HALL
COURT ROOM**

PRESENT: Don Williams, Harry King, Joe Roe, Tom Clark, Dick Seely

ABSENT: None

STAFF: Director of Planning, Stephen Polzella, Secretary, Brenda Belmonte

GUESTS: Marcia Hudock, George Miner, Heather Hanson, Michael J. LeRose, Dean Frisbie,
Ted Ostrander

Meeting called to order at 7:00pm by Chair Rowe.

MINUTES

July 22, 2008

**Motion by Williams, seconded by Seely, to approve the minutes of July 22, 2008,
Discussion, None, Motion Carries 5-0.**

**PUBLIC HEARING
CCIDA, SIKORSKY**

Chair Rowe opened the Public Hearing at 7:03pm noting it had been duly published in the Star Gazette.

SPEAKING FOR:

George Miner, President of STEG stated he is obviously in favor.

Rowe read a letter from Gale Wolfe, 219 Sing Road, dated August 25, 2008. Wolfe is concerned that a noise analysis was not performed near the residential area.

AGAINST: None

Public Hearing closed at 7:07pm

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
AUGUST 26, 2008**

**RESOLUTION ZBA-11-2008
CCIDA / SIKORSKY
MAXIMUM BUILDING HEIGHT**

Resolution by: Seely
Seconded by: Clark

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for an Area Variance on July 18, 2008 and held a public hearing on August 26, 2008; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2008-23, made a favorable recommendation to the Town of Big Flats Zoning Board of Appeals for their determination; and

WHEREAS, the Chemung County Planning Board made a favorable referral back to this Board; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated August 19, 2008; and

WHEREAS, granting this area variance will increase the maximum building height of a proposed Sikorsky Expansion on Tax Parcel # 57.02-2-60 to forty-one (41) feet; and

WHEREAS, on the basis of materials submitted by the applicant on and before August 26, 2008, this board finds criteria #1, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before August 26, 2008, this board finds criteria #2, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before August 26, 2008, this board finds criteria #3, BFZL 17.60.120-B, to fail; and

WHEREAS, on the basis of materials submitted by the applicant on and before August 26, 2008, this board finds criteria #4, BFZL 17.60.120-B, to fail; and

WHEREAS, on the basis of materials submitted by the applicant on and before August 26, 2008, this board finds criteria #5, BFZL 17.60.120-B, to pass; and

NOW, THEREFORE BE IT RESOLVED, to grant the Area Variance Request by Chemung County IDA, 400 East Church St., Elmira, NY 14901, to increase the maximum building height of a proposed Sikorsky Expansion on Tax Parcel # 57.02-2-60 to forty-one (41) feet, under the following condition(s):

- The proposed project receives a negative declaration for SEQRA from the Chemung County Legislature as Lead Agency

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FURTHER RESOLVED, for the purposes of SEQRA, this Board defers to the environmental review to be completed by the Lead Agency, the Chemung County Legislature.

CARRIED: **AYES:** Rowe, King, Seely, Clark
 NAYS: Williams

Dated: Tuesday, August 26, 2008
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

DISCUSSION:

Polzella explained that Chemung County has nominated itself as lead agency, however this board will be given time to submit comments. The Planning Board may have comments regarding the noise; whether they decide to challenge the County to become lead agency remains to be seen. Polzella recommends the ZBA defer their SEQR privileges to whoever lead agency is.

Seely stated that helicopters flying over are noisy, however the noise lasts for a very short time. There should be some type of shielding that could be put up for the testing of helicopters.

Polzella said there was no noise analysis performed near Gale Wolfe's property or the neighboring residential area. He does not necessarily want the Planning Board to be involved in SEQR, but he would like the county to be aware of this issue. SEQR impacts this board in regard to the visual impact of a higher building, but does not involve a lot of the noise issue other than it allows for the creation of more helicopters and more testing. The ZBA's decision would not directly affect the noise.

Rowe asked what the height expansion was for, what purpose does it serve?

Polzella stated that it is the height needed to construct what is inside.

Williams feels someone from the company should answer why they need that height.

Polzella's understanding is that the applicant feels the Planning Board made their determination two years ago and the building was constructed to the existing height. They want the expansion to match that height.

Seely said expanding to the north would put the helicopters closer to residential. Why couldn't they relocate to the other end?

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1 Miner replied, and Polzella concurred, they could not relocate due to the runway protection zone.
2 Miner also said the building height was needed for cranes, engines, and the height requirement for
3 helicopter props.

4
5 Discussion: Seely asked if the concerns of the board could be submitted.

6
7 Polzella replied yes, there would be a process to submit concerns to the lead agency.

8
9 Rowe stated that Miner is representing the company. CCIDA owns the building, and have
10 addressed the height.

11
12 Miner said it is the same height as the existing building. Business is good, and they need to
13 expand to allow for an additional 550 jobs in that location. The proposed 41'5" is what is needed.
14 It was the original design of the building and allows for the craneway to install the propellers and
15 the engines. It will give them the required clear height to manufacture the copters. There is no
16 reason to build higher than needed. That was the initial height requirement to manufacture those
17 helicopters. Fifteen million dollars have been spent building that plant. It is being built to that
18 height because that is what is needed to assemble the helicopters.

19
20 The board addressed the 5 criteria needed for an area variance.

21
22 1. *Whether an undesirable change will be produced in the character of the neighborhood or*
23 *community or a detriment to nearby properties will be created by the granting of the area*
24 *variance.*

25
26 Seely feels no, it is an extension of the existing height.

27
28 Rowe questioned the location of the proposed addition.

29
30 Polzella said the addition would be toward the airport, an extension of the high area of the existing
31 building.

32
33 Rowe stated the variance would be 6 1/2 feet; it would be hard to see where that would make an
34 impact.

35
36 ***Passes 5-0***

37
38 2. *Whether the benefit sought by the applicant can be achieved by some method, feasible for the*
39 *applicant to pursue, other than an area variance.*

40
41 Rowe stated of course the applicant would say there is no feasible alternative.

42
43 Seely referred to Miner's comments regarding the needed height requirements for the crane and to

TOWN OF BIG FLATS
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1 move products around.

2
3 Rowe said it makes sense to expand the original design of the building if that height is needed.
4 None of that information is before the board, however he feels it is not needed to make this
5 decision.

6
7 Williams disagrees because it does not state why they need it other than the fire code explanation.
8 He is opposed based on the material submitted.

9
10 Seely stated the Planning Board approved this for some valid reason. It is unfortunate that we do
11 not have that background information. There must be a reason why it was granted originally.

12
13 King, referring to staff comments stating it would match the roofline, said it makes some sense.

14
15 Polzella said yes, the problem is already there, however you have to think how it got there. That
16 is a tough question.

17
18 ***Passes 4-1***

19
20 ***3. Whether the requested area variance is substantial.***

21
22 Rowe explained that this is approximately an 18% difference.

23
24 Polzella commented that 6 1/2 feet does not seem like a lot in itself, but as a percentage it is
25 borderline whether or not it is substantial.

26
27 Rowe considers whether he would notice a difference by looking at it. He would see it as a
28 substantial increase due to the percentage. If he were to look at 2% vs. 18%, it would be
29 substantial.

30
31 Clark noted the entranceway looks as if it is below the ground level. Where is the height
32 measurement taken from?

33
34 Polzella said height is measured from wherever they call ground floor elevation.

35
36 ***Fails 5-0***

37
38 ***4. Whether the proposed area variance will have an adverse affect or impact on the physical or***
39 ***environmental conditions in the neighborhood or district.***

40
41 Polzella stated that granting the variance would promote more helicopters and more noise. Staff
42 feels this would have a physical impact because of the noise.

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1 Dean Frisbie, 51 Cayuga Drive – Frisbie said noise is the issue. He was on the Town Board and
2 approved this project. Aesthetically it is a very nice building. They are good neighbors and they
3 have brought in a lot of jobs. The noise from Blackhawks is not the same noise as with the new
4 helicopters. The testing hours have been 4pm-8pm. The last 30 minutes of the test, you feel as if
5 you are right in the middle of the plant. Frisbie's property borders the Orsillo property leaving a
6 small area to the open fields of the airport. It is loud. His concern is the noise level and the 4-hour
7 testing of the copters. If they test more than one helicopter at a time, wow, at my house it would
8 be a big difference. It is extremely noisy during the last portion of the test. He is not an engineer
9 but he can tell the difference.

10
11 Seely said it seems as though we have a lot of concerns with the noise.

12
13 Polzella explained the SEQR process to Frisbie, along with the county's request to be lead agency.
14 The Planning Board may challenge the county or send their comments to them to make them
15 aware of their concerns.

16
17 Frisbie would like Maple Shades to be informed of this. Only he and another neighbor were
18 notified of the public hearing.

19
20 Polzella explained that residents within 2000 feet are made aware of the public hearing. The
21 unfortunate thing is that the building and use is already there, as well as a lot of commitments
22 from several parties. Staff will try to make sure the county goes through all of the procedures.

23
24 Frisbie offered his appreciation saying there is a lot of testing between both Schwiezer and
25 Sikorsky. They are testing the Skyhawk now, not the Blackhawk. There will be quite a
26 difference.

27
28 Polzella noted there are concerns regarding the noise test areas , and he would like to see data.

29
30 Frisbie is sure they will have data, however a test pilot is going to kick it into gear. The pilot who
31 flies in for a day does not kick it into gear. When you do that, the propulsion of the jet engine
32 turbo goes considerably higher. Perhaps that testing could be done toward Schweizer and the
33 highway, where the noise currently is.

34
35 Rowe feels the roof itself does not have an impact, but the additional growth and testing that may
36 come out of it could have an impact on increased noise level. That is evident from some of the
37 communication. Rowe's opinion is that it does have an adverse affect to that neighborhood and
38 the noise condition.

39
40 Seely agrees. He feels extending the roofline is one thing, but there is an impact with the larger
41 building and more testing.

42
43 Williams believes it is a hard question, and he really does not know. Perhaps we should table this

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1 for tonight.

2
3 Rowe does not know if you would get further information any time soon based on the variance
4 request itself.

5
6 Williams said the law says it is too high, and he feels it is the company's responsibility to say they
7 need that height to do construction there. They need to tell us that, or others could come in, and
8 there are several reasons they could ask for the same thing. They need to come in themselves to
9 explain their reasons. Williams is not going to vote in favor of something that is going against the
10 law, and that is why he is in favor of tabling.

11
12 Rowe said that is an option; we will take a vote. If the motion fails the applicant would have to
13 resubmit.

14
15 Miner stated he thought this was all about the height.

16
17 Rowe explained that the variance would allow for the building to expand. Based on Miner's
18 comments it will allow for more production and more people. There is currently a noise issue in
19 the area, and a variance will increase that. There was testing in certain areas, however we do not
20 have data on the area where the neighbors are.

21
22 Miner stated there is an approved noise report.

23
24 Polzella mentioned that all of the testing was done near the airport, and not near the residential
25 neighborhood. We are questioning where that data is.

26
27 Rowe asked if the test was done with someone sitting there idling, or with someone testing to
28 make sure the helicopter will function when they take it into the air. For example, testing a car
29 when working on it is a totally different noise than when it drives down the road. If the helicopter
30 was to be tested inside the building, Rowe feels they would be making an effort to hamper the
31 noise.

32
33 Miner said there would not be any increased noise levels. His understanding is that two
34 helicopters make the same noise as one as far as noise levels are concerned. He is not an
35 engineer, but that is what he understands.

36
37 Polzella explained that the variance would not fail based on two of the criteria failing. The board
38 needs to take a hard look at each question.

39
40 ***Fails 5-0***

41
42 5. *Whether an alleged difficulty of compliance with this title was self-created.*
43

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1 The applicant states it is not self-created; that it was approved by the planning board, and did not
2 go through the ZBA when the building was constructed.

3
4 Seely does not feel it is self-created. The planning board allowed the building to be constructed.

5
6 King said it is quite obvious the noise was not taken into consideration.

7
8 Polzella noted there was a noise study back then, however he was not here at that time and does
9 not know what exact steps were taken. Staff does not feel it was self-created.

10
11 Seely asked if there was any information from the Town Board.

12
13 Polzella replied no, the county planning board made a favorable recommendation, and our
14 planning board also made a favorable recommendation. The town board would not look at it
15 unless it was sent to them by the ZBA.

16
17 ***Passes 5-0***

18
19 **REPORTS**

20 None

21
22 **OLD BUSINESS**

23
24 **Ted Ostrander Intrepretation**

25
26 Polzella distributed a map that was obtained from the tax records. This area is presently zoned
27 TC2. Ostrander was operating a farm market stand, which did not comply with zoning. A
28 violation was sent and Ostrander ceased operation. He is now looking for another area to do this.
29 Polzella gave Ostrander the option to come before the board for an interpretation. In the past,
30 there were greenhouses on this property. What was operated in the past would presently be
31 considered a non-conforming use. After one year the non-conforming use goes away. Polzella
32 referred to Section 17.04, pg. 228, and 228.1, of the code regarding non-conforming use. Staff
33 feels the applicant could apply for a use variance, and see no other way for him to continue this
34 use.

35
36 Ostrander presented his plans to the board and explained that it was a retail store in 1976 with
37 greenhouses in the rear. He would like to put up 3 or 4 greenhouses, grow homegrown fruits and
38 vegetables, as well as flowers, and turn it back into a retail shop.

39
40 Polzella explained that the applicant was under the use of farm stand or farm market which is not
41 allowed in TC2. The actual use he is requesting is agricultural plant. The previous non-
42 conforming use cannot be reinstated.

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1 Seely commented that a use variance is very difficult to get.

2
3 Williams asked how many acres were there, and Ostrander replied 12.

4
5 Polzella stated, based on his information, the area totals a little over 8 acres. Staff interpretation is
6 that this use is not permitted where the applicant is looking to operate. A use variance, which is
7 very difficult to obtain, would be required.

8
9 Rowe also feels that a use variance would be required, and agreed it would be difficult to obtain.
10 He understands it was there previously, but the fact is it went away, the property was used totally
11 differently, and the zoning laws have changed. Currently that type of use is not permitted.

12
13 Seely asked for a review of the use criteria noting they would all need to be satisfied.

14
15 Polzella reviewed and explained each criterion.

16
17 Seely asked if the property had been in the family for a long time.

18
19 Polzella answered since 1975, and the family operated it under this use.

20
21 Williams suggested the applicant request a zoning change. There would be a good chance it could
22 be changed due to having 8 acres.

23
24 Seely also agreed a zoning change may be possible, and said we have always wanted to support
25 agricultural use.

26
27
28 **MEMBERS COMMENTS**

29
30
31 **CORRESPONDENCE**

32
33 Recent Minutes

34
35 **Motion to adjourn at 8:25pm, by Seely seconded by Williams, Discussion, None, Motion**
36 **Carries 5-0.**

37
38 **Meeting adjourned at 8:26pm.**
39
40
41

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
OCTOBER 28, 2008

7:00

REGULAR MEETING

BIG FLATS COMMUNITIY CENTER

PRESENT: Harry King, Tom Clark, Joe Rowe, Don Williams, Dick Seeley

ABSENT: None

STAFF: Stephen Polzella, Director of Planning, Brenda Belmonte, Planning Secretary

GUESTS: Heather Hanson, Joe Gush, Laura Reynolds, Frank Reynolds, Leon Kraszewski, Karen Kraszerski, Bob Adams, Ann Crook, Stuart Johnson, Jane Mullen, Bill Mullen, Bill Owens, Marcia Hudock, Michael McDonnell, Ed Fairbrother

ROLL CALL

Chair Rowe called the meeting to order at 7:00pm noting all members were present.

MINUTES

Motion by Williams, seconded by Seely to approve the minutes of August 26, 2008.
Discussion, None, Motion Carries 5-0.

OLD BUSINESS

None

PUBLIC HEARING

Chair Rowe opened the public hearing at 7:05 noting it had been duly published in the Star Gazette

Mullen Use Variance

Polzella reviewed the staff report stating this is a Use Variance. The applicant is requesting to convert existing warehouse space into a dwelling unit. Per town code, the Conservation District allows only hunting cabins as dwelling units. The existing building was previously built up out of the flood plain. The applicant has addressed each criterion.

SPEAKING IN FAVOR:

William Mullen, 10 Carpenter Road, explained he wants to renovate approximately 800sq foot of unnecessary warehouse to build a living area for himself and his wife. He has spoken to nearby neighbors and they have no opposition. Jane Mullen explained they were required to comply with floodplain regulations at the time of building. She reiterated their hope to construct a small apartment within the unused warehouse space. There is an existing security system in place, which has activated a number of times, requiring them to drive from Elmira in the middle of the night. They would like to downsize. The Mullens had received approval in the past to build on the 25 acres at the rear of their property. Since then that area has been rezoned to Conservation where dwelling units are no longer permitted.

SPEAKING AGAINST: None

West Area Variance

Polzella reviewed the staff report stating the applicant is seeking relief from section 17.16.020, bulk and density. West is proposing to erect a 10' x 12' pre-built shed. Due to the narrow lot size and the existing coverage the applicant already exceeds lot coverage (with 34% and the allowable being 20%). The addition of 120sq feet would put him at 25%, however the increase is only 1% of the total lot coverage.

SPEAKING IN FAVOR: Richard West, 21 Canal St., said the code office quoted him 28%.

SPEAKING AGAINST: None

Southern Glass Area Variance

This is a request for relief from minimum lot coverage. The county has returned this, as well as the Mullen and West applications for local determination. Staff feels the proposed project would be an improvement. There are no plans for any future development other than landscaping and improvement of the parking lot. Staff feels this is self-created, however the other 4 criteria seem valid.

SPEAKING IN FAVOR:

Nick Cavallaro, 314 E. Pulteney St., Corning, reiterated there are no major changes planned. The hours of operation will be from 7:00am-4:00pm. Cavallaro plans to blacktop the front and side, as well as landscape. Most jobs are done off premises.

1 Bob Adams, 3069 St. Rte 352, Big Flats, stated he is not commenting for or against, but
2 from prior history with the previous owners. It was a complete nightmare for him and his
3 property. He was practically pushed off of his land, and had no help with that. He is not
4 worried about Cavallaro; he knows him and is sure he would work with him. Adams
5 would appreciate the board viewing this as to exactly where trucks are coming and going.
6 Previously, the driveway was used as a parking lot. The west side of the building, along
7 with the front, is conducive to parking. The remainder needs to be kept strictly as a
8 driveway.

9
10 Polzella explained that this board is determining lot size only. Parking is currently on the
11 west, with a shared right of way. Polzella referred to a colored map, and showed the
12 details to Adams, including landscaping and gravel.

13
14 Bill Owens, of Owens Plumbing and Heating, stated he has heard good things about
15 Cavallaro. It is puzzling to Owens why land was sold and divided out while having an
16 existing building.

17
18 Polzella clarified that this is a proposed new use. Once you request a change in use, town
19 code states it must comply with bulk and density.

20
21 Owens wonders why it was allowed when Gas Field Specialties bought it. He is
22 concerned with the safety of his customers and employees. The Dandy mart will also
23 cause more traffic flow.

24
25 Polzella stated DOT is pleased that Cavallaro plans to close off one area, leaving one
26 dedicated entrance. Dandy will also be addressing direct ingress and egress. DOT is
27 happy with the way things are cleaning up as they develop.

28
29 Owens feels getting on and off Rte. 352 is a hazard, especially between 3 and 6'oclock.
30 He does not want to wait until someone is killed to address this issue.

31
32
33
34
35
36
37 **Sikorsky Sign Variance**

38
39 Polzella explained this is a variance for 6 signs. He referred to a diagram and gave
40 further details for each sign.

41
42 **SPEAKING IN FAVOR:**

43
44 Mike McDonnell, 343 Deyo Hill Rd., Johnson City clarified that the signage request is to
45 exceed the number of signs, not the aggregate. This is unique, as it needs signage to the
46 roadways as well as to the airfields. That is the basis for the sign variance.

1 **SPEAKING AGAINST:** None

2
3 **Krazewski Variance**

4
5 Polzella reviewed the staff report. The applicant is requesting to lower the setback from
6 the required 75ft. to 50ft. to build a 50' x 75' pole barn. The county planning board has
7 sent it back for local determination, and the town planning board has sent it to the ZBA
8 for their determination. Krazewski has submitted further information, which is available
9 in the packets.

10
11 **SPEAKING IN FAVOR:**

12
13 Leon Krazewski, 15 Sticklertown Rd., Corning, explained the topography does not allow
14 for him to build without the requested variance. He would have to remove several trees,
15 as well as a fence. It will be a drive-through building where hay will be brought in,
16 allowing them to drive out the other side. One side of the road has a buried telephone
17 wire, and there is a gas pipeline to the rear of the home. Drainage has already been
18 figured out giving consideration to existing electric wires, etc.

19
20 Frank Reynolds, 41 Reynolds Dr. Ext, Horseheads, stated he has known the applicant for
21 a long time. He has been an inspiration to Reynolds with what he has accomplished.
22 There is not as many as five cars a day that travel on that road. Reynolds sees no reason
23 not to give the applicant a variance.

24
25 **SPEAKING AGAINST:** None

26
27 **Gush Variance**

28
29 Polzella explained the applicant is asking for relief from accessory structure
30 requirements, specifically maximum accumulated square footage from all accessory
31 buildings and maximum floor area of an individual floor area. The planning board
32 recommended denial, stating they felt the applicant failed all criteria. The applicant has
33 submitted a rebuttal.

34
35 **SPEAKING FOR:**

36
37 Joseph Gush, Olcott Rd., would like to put an addition on an existing small shed. He
38 noted the lot is almost 2 acres.

39
40 **SPEAKING AGAINST:** None

41
42 **Frank Reynolds Variance**

43
44 The applicant wishes to go forward with a subdivision to split into two parcels. This
45 would be nearly two acres under the required three. The planning board meeting took
46 three separate votes to get their consensus. Polzella reviewed the criteria results from
47 that planning board meeting.

SPEAKING IN FAVOR:

Frank Reynolds, the applicant, stated there are two reasons they would like to build this house. They had previously built one house in the woods. The daughter's job took her away and she sold that house. She would now like to build on the proposed lot, to help take care of her aging parents. According to state building code, the zoning would change as water is made available. Giving her more land would cause Reynolds to have to remove a sand filter, costing a few thousand dollars. Reynolds also stated he has given the town acreage and no one uses it. He has done test holes for a septic system, and the health department said he only needs 15,000 sq ft to build with city water. His son has only 1.1 acres, and a leach field, the same as proposed for this property. That lot is half of what this lot is. Reynolds does not feel it would change the property values in that area. He has developed close to 100 properties over the years, and has had a good relationship with the building inspectors up until now. He is not about to harm anyone, and does not believe it would be harmful to build there.

Polzella clarified the son's lot is in a different zoning district.

Clark questioned the size of the lot.

Reynolds replied he has roughly 27 acres, however much of it is elevated, and would be quite costly to build on.

Polzella explained that Reynolds has presented a request to the town board for a zoning change. The board has said they are looking into zoning changes in the future. Reynolds has been asked to hold his request to see what future changes would be made.

SPEAKING AGAINST: None

Chair Rowe closed the Public Hearing at 7:48pm to resume the regular portion of the meeting.

**RESOLUTION ZBA-12-2008
MULLEN USE VARIANCE - DENIED**

Resolution by: Seely
Seconded by: Clark

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for an Area Variance on September 26, 2008 and held a public hearing on October 28, 2008; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2008-40, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination without comments; and

1
2 **WHEREAS**, the Chemung County Planning Board on October 23, 2008 returned the
3 referral to the Town of Big Flats Zoning Board of Appeals for local determination; and
4

5 **WHEREAS**, the Town of Big Flats Planning Staff provided a staff report dated October
6 21, 2008; and
7

8 **WHEREAS**, granting this use variance will the use of the property to include a dwelling unit;
9 and
10

11 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
12 28, 2008, this board finds criteria #1, BFZL 17.60.120-B, to fail based on the applicant
13 making a reasonable return on the property via the existing nonconforming use; and
14

15 **NOW, THEREFORE BE IT RESOLVED**, for the purposes of SEQRA, this Board
16 finds a negative declaration of significant environmental impacts for the proposed action
17 based on review documented in the Staff Report date October 21, 2008; and
18

19 **FURTHER RESOLVED**, to approve the Use Variance Request by William H. Mullen,
20 10 Carpenter Rd., Elmira, NY 14903, to allow the use of the property to include a
21 dwelling unit.
22

23 **CARRIED:** **AYES:** None

24 **NAYS:** Rowe, King, Seely, Clark, and Williams
25

26 Dated: Tuesday, October 28, 2008

27 BIG FLATS, NEW YORK

28 By order of the Zoning Board of Appeals of the Town of Big Flats

29 Joe Rowe

30 Chairman, Zoning Board of Appeals
31

32 **DISCUSSION:**
33

34 Polzella noted a SEQR determination is required. Staff recommends a negative
35 declaration by the ZBA, as they see no significant environmental impact for this
36 proposal.
37

38 Williams asked if there was a house currently on the property, and was told no, it is a
39 separate ownership.
40

41 Seely feels it is hard to fit this into the requirements of a use variance.
42

43 Polzella agreed, saying while looking at the 4 criteria, remember to think of the variance
44 itself, rather than focusing on the simplicity of the action. By allowing this, what
45 residential impacts does this have? By allowing one there as a legal use, what are you
46 setting as town liability, FEMA liability and character of the neighborhood?

1
2 Seely noted a hunting cabin would be allowed in this conservation district with planning
3 board approval. It is not a very substantial variance being asked for – they are not
4 changing much of anything.

5
6 Rowe said sometimes you cannot actually see the use, however permitting it would allow
7 others to come in and request the same for an apartment dwelling. The board must be
8 very clear about what they are doing, as you would be setting precedence. If one were
9 allowed, you would need to allow another.

10
11 Polzella stated if this were to be granted, you would be opening up more potential for this
12 site. The next person could convert the store into an apartment, opening a liability for the
13 town with FEMA, etc.

14
15 Rowe explained that the statements presented show the applicant does make a return on
16 the property. It is not in our ability to determine how much, however he does make a
17 return. Long-term, it is a change in the character of the neighborhood, which is not
18 something you can see.

19
20 Polzella referred to a similar previous case in which the applicant had a non-conforming
21 use, and stated, once again, the applicant is making a reasonable return. Each of the four
22 criteria has to pass in order to grant this variance. Question 1 is usually the most
23 difficult. If the first one fails, the variance should be denied.

24
25 The board was queried and all voted to fail criteria 1.

26
27
28 **RESOLUTION ZBA-13-2008**
29 **WEST AREA VARIANCE - GRANTED**

30
31 Resolution by: Clark
32 Seconded by: Seely

33
34 **WHEREAS**, the Town of Big Flats Zoning Board of Appeals received a request for an
35 Area Variance on August 27, 2008 and held a public hearing on October 28, 2008; and

36
37 **WHEREAS**, the Town of Big Flats Planning Board, Resolution P-2008-36, returned the
38 referral to the Town of Big Flats Zoning Board of Appeals for their determination
39 without comments; and

40
41 **WHEREAS**, the Town of Big Flats Planning Staff provided a staff report dated October
42 21, 2008; and

43
44 **WHEREAS**, granting this area variance will provide 15% relief from BFZL 17.16.020,
45 Maximum Lot Coverage; and

1 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
2 28, 2008, this board finds criteria #1, BFZL 17.60.120-B, to pass; and
3

4 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
5 28, 2008, this board finds criteria #2, BFZL 17.60.120-B, to pass; and
6

7 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
8 28, 2008, this board finds criteria #3, BFZL 17.60.120-B, to pass; and
9

10 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
11 28, 2008, this board finds criteria #4, BFZL 17.60.120-B, to pass; and
12

13 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
14 28, 2008, this board finds criteria #5, BFZL 17.60.120-B, to fail; and
15

16 **NOW, THEREFORE BE IT RESOLVED**, for the purposes of SEQRA, this Board
17 finds a negative declaration of significant environmental impacts for the proposed action
18 based on review documented in the Staff Report date October 21, 2008; and
19

20 **FURTHER RESOLVED**, to approve the Area Variance Request by Richard West, 21
21 Canal St, Big Flats, NY 14814, to provide 15% relief from BFZL 17.16.020, Maximum
22 Lot Coverage.
23

24 **CARRIED:** **AYES:** Rowe, King, Seely, Clark, and Williams
25 **NAYS:** None
26

27 Dated: Tuesday, October 28, 2008
28 BIG FLATS, NEW YORK
29
30

31 By order of the Zoning Board of Appeals of the Town of Big Flats
32 Joe Rowe
33 Chairman, Zoning Board of Appeals
34

35 **DISCUSSION:**
36

37 Rowe stated this is an area variance. The applicant had not yet addressed the criteria,
38 therefore Rowe reviewed it with him:
39

- 40 1. Whether an undesirable change will be produced in the character of the
41 neighborhood.
42 No, the shed will be sided and blend in very nicely. It would be in the back corner
43 of the lot so as not to be intrusive.
44
- 45 2. Whether the benefit sought by the applicant could be achieved in any other way.
46 West feels it could not. He would like to get the use of his garage back.

3. Whether the requested area variance is substantial.
West answered no; as mentioned previously it is less than 1 percent.
4. Whether the proposed area variance would have an adverse affect on the neighborhood.
No.
5. Whether the alleged difficulty of compliance was self-created.
West said yes, he bought everything that is currently in the garage.

Seely said the existing building looks like it has been there for some time. Had this been built prior to the zoning?

Polzella replied yes. Staff feels approval of this request should be considered.

Rowe then reviewed the criteria with the board.

1. Rowe said it does increase the expansion of the coverage. He understands it is a one percent addition, and was already non –conforming. The board concurs there would be no significant change to the neighborhood.
2. Rowe said keep in mind this already exceeds in square footage. The applicant somehow put himself in this position by purchasing the various snow blowers, and equipment. The board concurs.
3. Whether the request is substantial.
The board agrees this is substantial.
4. Whether the proposed area variance will have an adverse affect on the neighborhood.
Williams feels if everyone built over 35% there would be an environmental effect.
Rowe said there are other lots that might exceed presently, to which Seely agreed, saying there are several. Passed 3-2
5. Whether the alleged difficulty was self-created.
The board agrees this is self-created.

**RESOLUTION ZBA-14-2008
CAVALLARO AREA VARIANCE - GRANTED**

Resolution by: Williams
Seconded by: Seely

1 **WHEREAS**, the Town of Big Flats Zoning Board of Appeals received a request for an
2 Area Variance on September 25, 2008 and held a public hearing on October 28, 2008;
3 and
4

5 **WHEREAS**, the Town of Big Flats Planning Board, Resolution P-2008-31, returned the
6 referral to the Town of Big Flats Zoning Board of Appeals for their determination
7 without comments; and
8

9 **WHEREAS**, the Town of Big Flats Planning Staff provided a staff report dated October
10 21, 2008; and
11

12 **WHEREAS**, granting this area variance will provide 9% relief from BFZL 17.16.020, Minimum
13 Lot Area; and
14

15 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
16 28, 2008, this board finds criteria #1, BFZL 17.60.120-B, to pass; and
17

18 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
19 28, 2008, this board finds criteria #2, BFZL 17.60.120-B, to pass; and
20

21 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
22 28, 2008, this board finds criteria #3, BFZL 17.60.120-B, to pass; and
23

24 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
25 28, 2008, this board finds criteria #4, BFZL 17.60.120-B, to pass; and
26

27 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
28 28, 2008, this board finds criteria #5, BFZL 17.60.120-B, to fail; and
29

30 **NOW, THEREFORE BE IT RESOLVED**, for the purposes of SEQRA, this Board
31 finds a negative declaration of significant environmental impacts for the proposed action
32 based on review documented in the Staff Report date October 21, 2008; and
33

34 **FURTHER RESOLVED**, to approve the Area Variance Request by Nick Cavallaro, 350
35 W. Pulteney St. Corning, NY 14830, to provide 9% relief from BFZL 17.16.020,
36 Minimum Lot Area.
37

38 **CARRIED: AYES:** Rowe, King, Seely, Clark, and Williams
39 **NAYS:** None
40

41 Dated: Tuesday, October 28, 2008
42 BIG FLATS, NEW YORK

43 By order of the Zoning Board of Appeals of the Town of Big Flats
44 Joe Rowe
45 Chairman, Zoning Board of Appeals
46

DISCUSSION:

Rowe reviewed the criteria with the applicant as well as with the board.
There was discussion regarding the use of the driveway. Polzella will take this information back to the planning board.

**RESOLUTION ZBA-15-2008
SIKORSKY SIGN VARIANCE – PARTIALLY GRANTED**

Resolution by: Rowe
Seconded by: Clark

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for a Sign Variance on October 3, 2008 and held a public hearing on October 28, 2008; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2008-34, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination without comments; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated October 21, 2008; and

WHEREAS, granting this sign variance will provide relief from BFZL 17.52, Signs; and

NOW, THEREFORE BE IT RESOLVED, for the purposes of SEQRA, this Board defers to the environmental review to be completed by the Lead Agency, the Chemung County Legislature; and

FURTHER RESOLVED, to approve the request for the 70 Sq. Ft. sign on the South Elevation on Drawing A-2 dated 07/18/08, the 70 Sq. Ft. sign on the North Elevation on Drawing A-2 dated 07/18/08, the 18 Sq. Ft. sign on the West Elevation on Drawing A-2 dated 07/18/08 and the secondary entrance freestanding sign on Drawing A-2 dated 07/18/08. Also to Deny the request for the 18 Sq. Ft. sign on the Flight Operations East Elevation on Drawing A-2 dated 07/18/08 and the 18 Sq. Ft. sign on the North Elevation on Drawing A-2 dated 07/18/08.

CARRIED: AYES: Rowe, King, Seely, Clark
NAYS: Williams

Dated: Tuesday, October 28, 2008
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe

1 Chairman, Zoning Board of Appeals

2
3 **DISCUSSION:**

4
5 Rowe clarified that this would be a motion to permit 7 signs to rest on the building if all
6 are approved.

7
8 Polzella stated that town code allows only one on the principal side of the building. Per
9 the drawing, sign Number 3 is already on the building, and Number 6 would be added at
10 the second entrance.

11
12 McDonnell said there are 9 signs – 4 existing, and 5 proposed.

13
14 Rowe explained that a separate request needs to be done for each one.

15
16 Polzella reviewed each sign and its' location.

17
18 McDonnell gave a description of each sign. There was further discussion as to where the
19 signs were located, as well as their size. McDonnell referred to his map, giving details as
20 to where each sign would face.

21
22 Seely commented on the number of variances requested, although they are small signs.

23
24 Polzella stated this is more like a campus.

25
26 Rowe agreed that it is quite a number of signs.

27
28 Polzella referred to sign Number 5. This would be located on the backside of the flight
29 operations building.

30
31 Rowe understands the need for identity, however feels that only 1 is needed on the side.
32 You would have to enter in one of the 2 main entrance areas. The sign on Sing Sing Rd.
33 is an important one.

34
35 Williams asked if the applicant actually feels this is the minimum number of signs needed.

36
37 McDonnell said yes, and they are required.

38
39 Rowe referred to a sign that is currently facing I-86, saying he agrees that one is needed.
40 He is concerned about the other signs, as well as having signs at both of the entrances.

41 Rowe is of the opinion that nine signs seem to be a bit of overkill. If this were a
42 requirement, they would have been put up at the time the building was constructed.
43 This is a complex that is pretty much connected to itself. If you get lost outside, you will
44 know where you are. How many signs are reasonable to approve on a building? He
45 cannot understand the request for additional signs.

46
47 Clark feels they do need an entrance sign.

1
2 Polzella said one sign is allowed.

3
4 Seely feels the signs over the entranceway are fine, and they look good.

5
6 Ann Crook, Airport Manager, commented on sign Number 5, saying pilots do get lost
7 from time to time, and this would help.

8
9 Polzella stated the need to look at what kind of impacts this would have for other places
10 in that area. He does not know if 'needing' it is a sufficient requirement. What basis
11 really says they would need those?

12
13 Rowe feels the code needs to identify what is needed. He understands the signs at the
14 main entrance and at the Sing Sing Rd. area. The current number of requested signs is
15 obsessive, and the operation is not suffering without them. New businesses will be
16 coming in, and perhaps would request signs according to what has been previously
17 approved.

18
19 **RESOLUTION ZBA-16-2008**
20 **KRAZSEWSKI AREA VARIANCE - GRANTED**

21
22 Resolution by: Clark

23 Seconded by: Seely

24
25 **WHEREAS**, the Town of Big Flats Zoning Board of Appeals received a request for an
26 Area Variance on September 22, 2008 and held a public hearing on October 28, 2008;
27 and

28
29 **WHEREAS**, the Town of Big Flats Planning Board, Resolution P-2008-39, returned the
30 referral to the Town of Big Flats Zoning Board of Appeals for their determination
31 without comments; and

32
33 **WHEREAS**, the Town of Big Flats Planning Staff provided a staff report dated October
34 21, 2008; and

35
36 **WHEREAS**, granting this area variance will provide 20 ft. relief from BFZL 17.16.020,
37 Minimum Front Setback; and

38
39 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
40 28, 2008, this board finds criteria #1, BFZL 17.60.120-B, to pass; and

41
42 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
43 28, 2008, this board finds criteria #2, BFZL 17.60.120-B, to fail; and

44
45 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
46 28, 2008, this board finds criteria #3, BFZL 17.60.120-B, to fail; and
47

1 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
2 28, 2008, this board finds criteria #4, BFZL 17.60.120-B, to pass; and
3

4 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
5 28, 2008, this board finds criteria #5, BFZL 17.60.120-B, to fail; and
6

7 **NOW, THEREFORE BE IT RESOLVED**, for the purposes of SEQRA, this is a Type
8 2 action; and
9

10 **FURTHER RESOLVED**, to approve the Area Variance Request by Leon Kraszewski, 15
11 Sticklertown Rd., Corning, NY 14830, to provide 20 ft. relief from BFZL 17.16.020,
12 Minimum Front Setback due to the undue hardship that would be created by placing the
13 pole barn in an alternate location.
14

15 **CARRIED:** **AYES:** King, Seely, Clark, and Williams

16 **NAYS:** None

17 **ABSTAINED:** Rowe
18

19 Dated: Tuesday, October 28, 2008

20 BIG FLATS, NEW YORK

21 By order of the Zoning Board of Appeals of the Town of Big Flats

22 Joe Rowe

23 Chairman, Zoning Board of Appeals
24

25 **DISCUSSION:**
26

27 Rowe noted the applicant did respond to the criteria, along with submitting pictures of the
28 property.
29

30 Seely congratulated Krazewski on the appearance of his property, and said due to the
31 topography, this is one of the only places feasible to build the pole barn.
32

33 Williams asked how many head of cattle the applicant has.
34

35 Krazewski answered 60; with just him, his wife, and summer help, they feel this is what
36 they can handle.
37

38 Polzella explained that due to the Agricultural District Law, Krazewski does not need to
39 go through the site plan procedure.
40

41 Clark commented on an area with a considerable drop-off, noting it could not be built
42 there.
43

44 Rowe explained how he thought it could be place differently.
45

1 Clark said he looked at the property, and again noted the drop-off, as well as there being
2 power lines in the area.

3
4 Seely also commented on the drop-off, and noted it would take some excavation to build
5 there.

6
7 Rowe referred to concerns from the department of public works as to how close a 4000sq
8 ft building is located next to a heeled entrance.

9
10 Seely is of the opinion is it is self-created, due to the applicant's decision on where to
11 place the pole barn on his property. It is also self-created because the applicant decided
12 to purchase this property and develop it.

13
14 Krazewski clarified that at the time he purchased the property the setback was only 50
15 feet.

16
17
18 **RESOLUTION ZBA-17-2008**
19 **GUSH AREA VARIANCE - DENIED**

20
21 Resolution by: Seely
22 Seconded by: Williams

23
24 **WHEREAS**, the Town of Big Flats Zoning Board of Appeals received a request for an
25 Area Variance on September 4, 2008 and held a public hearing on October 28, 2008; and

26
27 **WHEREAS**, the Town of Big Flats Planning Board, Resolution P-2008-38, returned the
28 referral to the Town of Big Flats Zoning Board of Appeals with a recommendation for
29 denial; and

30
31 **WHEREAS**, the Town of Big Flats Planning Staff provided a staff report dated October
32 21, 2008; and

33
34 **WHEREAS**, granting this area variance will provide relief from BFZL 17.40.020, Accessory
35 Structure requirements; and

36
37 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
38 28, 2008, this board finds criteria #1, BFZL 17.60.120-B, to fail; and

39
40 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
41 28, 2008, this board finds criteria #2, BFZL 17.60.120-B, to fail; and

42
43 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
44 28, 2008, this board finds criteria #3, BFZL 17.60.120-B, to fail; and

45
46 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
47 28, 2008, this board finds criteria #4, BFZL 17.60.120-B, to fail; and

1
2 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
3 28, 2008, this board finds criteria #5, BFZL 17.60.120-B, to fail; and
4

5 **NOW, THEREFORE BE IT RESOLVED**, for the purposes of SEQRA, this Board
6 finds a negative declaration of significant environmental impacts for the proposed action
7 based on review documented in the Staff Report date October 21, 2008; and
8

9 **FURTHER RESOLVED**, to approve the Area Variance Request by Joseph Gush, 10
10 Olcott Rd. South, Big Flats, NY 14814, to provide relief from BFZL 17.40.020,
11 Accessory Structure requirements.

12 **CARRIED: AYES:** Clark

13 **NAYS:** King, Seely, Rowe, and Williams
14
15

16 Dated: Tuesday, October 28, 2008

17 BIG FLATS, NEW YORK

18 By order of the Zoning Board of Appeals of the Town of Big Flats

19 Joe Rowe

20 Chairman, Zoning Board of Appeals
21

22 **DISCUSSION:**
23

24 Polzella explained the planning board reviewed this and made a recommendation for
25 denial based on the criteria. Also, the code enforcement officer has stated there are open
26 code violations on this property.
27

28 Discussion of the criteria:
29

30 Rowe stated at 80%, he would see this as a change.
31

32 Polzella stated the code for R1, regarding maximum accumulative square feet for
33 accessory structure is 1000 sq ft. The maximum for an accessory structure is 750 sq ft.
34 The proposal would make these 1120 sq ft. There are currently two accessory structures
35 on this lot.
36

37 Seely pointed out the closeness of the buildings as far as fire safety.
38

39 Polzella explained this would need to pass by super majority due to the results of the
40 planning board.
41

42 **RESOLUTION ZBA-18-2008**

43 **REYNOLDS AREA VARIANCE - DENIED**
44

45 Resolution by: Williams

46 Seconded by: Seely

1
2 **WHEREAS**, the Town of Big Flats Zoning Board of Appeals received a request for an
3 Area Variance on September 3, 2008 and held a public hearing on October 28, 2008; and
4

5 **WHEREAS**, the Town of Big Flats Planning Board, Resolution P-2008-37, returned the
6 referral to the Town of Big Flats Zoning Board of Appeals for their determination with
7 the following comments:

- 8 • Criteria #1 –passed by majority
- 9 • Criteria #2 – failed by consensus
- 10 • Criteria #3 – failed by majority
- 11 • Criteria #4 – passed by consensus
- 12 • Criteria #5 – failed by consensus; and

13
14 **WHEREAS**, the Town of Big Flats Planning Staff provided a staff report dated October
15 21, 2008; and
16

17 **WHEREAS**, granting this area variance will provide relief from BFZL 17.16.020, Minimum Lot
18 Area; and
19

20 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
21 28, 2008, this board finds criteria #1, BFZL 17.60.120-B, to pass; and
22

23 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
24 28, 2008, this board finds criteria #2, BFZL 17.60.120-B, to fail; and
25

26 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
27 28, 2008, this board finds criteria #3, BFZL 17.60.120-B, to fail; and
28

29
30
31 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
32 28, 2008, this board finds criteria #4, BFZL 17.60.120-B, to pass; and
33

34 **WHEREAS**, on the basis of materials submitted by the applicant on and before October
35 28, 2008, this board finds criteria #5, BFZL 17.60.120-B, to fail; and
36

37 **NOW, THEREFORE BE IT RESOLVED**, for the purposes of SEQRA, this Board
38 finds a negative declaration of significant environmental impacts for the proposed action
39 based on review documented in the Staff Report date October 21, 2008; and
40

41 **FURTHER RESOLVED**, to approve the Area Variance Request by Frank Reynolds, 41
42 Reynolds Drive Ext., Horseheads, NY 14845, to provide relief from BFZL 17.16.020,
43 Minimum Lot Area.
44

45 **CARRIED: AYES:** None

46 **NAYS:** Clark, King, Seely, Rowe, and Williams

1
2
3 Dated: Tuesday, October 28, 2008
4 BIG FLATS, NEW YORK

5 By order of the Zoning Board of Appeals of the Town of Big Flats
6 Joe Rowe
7 Chairman, Zoning Board of Appeals
8

9 **DISCUSSION:**

10
11 Polzella said it took some time for the planning board to get a recommendation, however
12 the final decision was that 3 criteria failed and 2 passed. Staff recommends denial.
13

14 Rowe asked Reynolds for his response to the variance criteria.
15

16 1. As to whether an undesirable change would be produced in the character of the
17 neighborhood, Reynolds responded "No."
18

19 2. As to whether the benefit sought could be achieved by some method other than a
20 variance:
21

22 Reynolds answered the only way would be to reduce the lot size, which would not leave
23 the required 3 acres remaining. He said if you read the state building code, you do not
24 need 3 acres to build.
25

26 3. As to whether the request is substantial:
27

28 Reynolds feels this is a reasonable request. According to the health department, you do
29 not need 3 acres to build if you have public water.
30

31 4. As to whether the variance would have an adverse affect on the neighborhood,
32 Reynolds responded "No."
33

34 5. As to whether the alleged difficulty was self-created:
35

36 Reynolds said yes, he feels we are all responsible for what we do.
37 He said he has previously developed lots, and hasn't killed anybody yet. If the town
38 board changed the zoning, he would be 'home free'.
39

40 Rowe asked if Reynolds were to build a home there, when would he break ground?
41

42 Reynolds replied it was going to be this fall, however now it looks like it could be next
43 spring.
44

45 Polzella said we are in the process of reviewing / changing the zoning. It may be until
46 this time next year before anything is adopted.

1
2 Reynolds inquired about applying for a zoning change.

3
4 Polzella explained that the applicant would need signatures from 50% of the residents in
5 that area.

6
7 Polzella pointed out that under current zoning there is property on the other side of the
8 son's property, which could be built on presently.

9
10 Reynolds replied that is not where his daughter wants to live. He isn't going to hurt
11 anybody, and wouldn't be changing the area. Also, the health department would allow it.

12
13 Clark believes, with 27 acres, there is plenty of land to build somewhere else.

14
15 Seely feels the zoning change is a good idea.

16
17 Rowe stated this is quite a substantial variance. Also, the road frontage lot width would
18 be an issue that would need to be addressed. He understands the daughter wants to live
19 next to Reynolds, however he should consider the lot on the other side of his son.

20
21 Reynolds replied that the house she wants would not fit on that lot.

22
23 Polzella suggested Reynolds request a zoning change at the town board meeting.

24
25 **RESOLUTION ZBA-19-2008**

26 **2009 FEE SCHEDULE**

27
28 Resolution by: Seely

29 Seconded by: Rowe

30
31 **WHEREAS**, the Town of Big Flats Department of Planning has provided the Zoning
32 Board of Appeals with a revised fee schedule effective January 1, 2009; and

33
34 **WHEREAS**, this Board reviewed the revised fee schedule at their regular meeting
35 October 28, 2008; and

36
37 **WHEREAS**, the revised Zoning Fees are:

- 38 • Residential Area Variance: \$250.00 per relief requested
39 • Non-Residential Area Variance: \$500.00 per relief requested
40 • Use Variance: \$1,000.00
41 • Sign Variance: Same as Area Variance
42 • Zoning Amendment (Up to 5 Acres): \$100.00
43 • Zoning Amendment (5 to 25 Acres): \$250.00
44 • Zoning Amendment (Over 25 Acres): \$500.00; and
45

1 **NOW, THEREFORE BE IT RESOLVED**, for the purposes of SEQRA, this is a Type
2 action not subject to environmental review; and
3

4 **FURTHER RESOLVED**, to approve and forward the revised fee schedule to the Town
5 of Big Flats Town Board for Approval.
6

7 **CARRIED: AYES:** King, Seely, Rowe, and Williams
8 **NAYS:** Clark
9

10
11 Dated: Tuesday, October 28, 2008
12 BIG FLATS, NEW YORK

13 By order of the Zoning Board of Appeals of the Town of Big Flats
14 Joe Rowe
15 Chairman, Zoning Board of Appeals
16

17
18 **DISCUSSION:**
19

20 Polzella explained the new fee schedule would be effective January 1, 2009. As we can
21 see from tonight's meeting, with 7 variances, and the time put into each, the fee schedule
22 needs to be adjusted. For example, the cost to Sikorsky for coming here tonight was \$50.
23 Per the proposed new fees, the cost would be ~\$3000. Staff is looking for a motion to
24 forward this to the town board for approval.
25

26 Clark feels the fees are too steep.
27

28 **Motion by Williams, seconded by Rowe to adjourn at 10:19pm, Discussion, None,**
29 **Motion Carries 5-0.**
30

31 **Meeting adjourned at 10:20pm.**

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
NOVEMBER 25, 2008**

**7:00PM
REGULAR MEETING
BIG FLATS COMMUNITY CENTER
ROOM 'A'**

PRESENT: Joe Rowe, Chair, Harry King, Don Williams, Richard Seely, Tom Clark

ABSENT: None

STAFF: Stephen Polzella, Planning Director, Brenda Belmonte, Planning Secretary

GUESTS: Heather Hanson, David Bohlayer, Nancy Bohlayer, Julie Kucko, Jim Kucko

Chair Rowe called the meeting to order at 7:00pm, noting all members were present.

MINUTES

November 4, 2008

Motion by Seely, seconded by Williams, to approve the minutes of November 4, 2008

Discussion, None, Motion Carries 5-0.

PUBLIC HEARING

BOHLAYER AREA VARIANCE – GRANTED

TAX PARCEL 56.00-1-21

Chair Rowe opened the public hearing at 7:05pm, noting it had been duly published in the Star Gazette.

SPEAKING FOR:

David Bohlayer explained he would like to put a wood boiler on his property. Town code requires it to be placed 200' from the property line, making it necessary to request an area variance for 30' relief. Bohlayer owns 23 acres, and he feels the stove would not be a nuisance to the neighbors. His plan is to burn seasoned firewood only.

SPEAKING AGAINST:

None

Public Hearing closed at 7:09 pm

**BOHLAYER AREA VARIANCE – GRANTED
TAX PARCEL 56.00-1-21**

Resolution by: Seely
Seconded by: Clark

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for an Area Variance on October 28, 2008 and held a public hearing on November 25, 2008; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2008-46, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a favorable recommendation; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated November 18, 2008; and

WHEREAS, granting this area variance will provide 30 ft. relief from Big Flats Town Code 15.16.050(C), Outdoor Furnace Setback; and

WHEREAS, on the basis of materials submitted by the applicant on and before October 28, 2008, this board finds criteria #1, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before October 28, 2008, this board finds criteria #2, BFZL 17.60.120-B, to fail; and

WHEREAS, on the basis of materials submitted by the applicant on and before October 28, 2008, this board finds criteria #3, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before October 28, 2008, this board finds criteria #4, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before October 28, 2008, this board finds criteria #5, BFZL 17.60.120-B, to fail; and

NOW, THEREFORE BE IT RESOLVED, for the purposes of SEQRA, this is a Type 2 action; and

FURTHER RESOLVED, to approve the Area Variance Request by David and Nancy Bohlayer, 432 Hibbard Rd., Horseheads NY 14845, to provide 30 ft. relief from Big Flats Town Code 15.16.050(C), Outdoor Furnace Setback based on the review of the criteria in the BFZL.

CARRIED: AYES: King, Rowe, Seely, Clark, and Williams
NAYS: None
ABSTAINED:

Dated: Tuesday, November 25, 2008
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

DISCUSSION:

Polzella reviewed the staff report. Staff has reviewed the 5 criteria along with the applicant's comments.

1. Staff finds this is a very rural area. The closest structure is approximately 440' away and there are dense woods in the area. Staff feels this would not produce an undesirable change in the neighborhood.
2. It is for this board to determine whether the benefit sought can be achieved by some other method.
3. As to whether the request is substantial, the request is for 15', and it would be possible for the stove to be placed another 5' to the north.
4. As to whether the proposed variance will have an adverse affect on the environment – The applicant plans to burn seasoned wood and coal. If misused it would have an adverse affect on the environment.
5. As to whether this is self-created – The applicant owned the land prior to the current wood boiler law. It could have been installed prior to this law without needing a variance. Staff views this as being self-created.

Staff recommends considering approval of this variance.

Seely asked if the boiler had a catalytic converter.

Bohlayer said no, not that he knows of. He has looked at several kinds, and did not see converters on any of them.

Code Enforcement would issue a building permit and make the necessary inspections for proper installation.

Seely noted the woods in that area is quite dense; you would not even see the burner.

Williams asked if the applicant would be disposing of any garbage in the burner, and Bohlayer responded no.

The board reviewed the criteria:

1. As to whether the requested variance would produce an undesirable change in the character of the neighborhood.
Passes 5-0
2. As to whether the benefit sought could be achieved by some other feasible method.

Clark feels there are other systems available, however the cost would be an issue. He does not see a problem with burning wood.

Polzella pointed out that even if one of the criteria were to fail, it would not necessarily indicate a denial. Currently the applicant heats with wood inside the house, with propane backup.

Rowe commented that he also lives in that area, and uses propane. He stated that the applicant could use oil as well.
Fails 5-0

3. Whether the requested area variance is substantial.
Passes 5-0
4. Whether the proposed area variance will have an adverse effect on the physical or environmental conditions of the neighborhood.

Polzella reminded the board that the variance stays with the property. It cannot be guaranteed that a new resident would not burn garbage.

Rowe recalled that some areas are not allowing these stoves because of environmental concerns.

Polzella reviewed the section of code pertaining to boilers. If there were a problem, code enforcement would send a violation requiring the situation to be remedied.

Williams commented that the applicant currently burns wood, and therefore the proposed stove should not be of any more concern than what is being done now.
Passes 3-2

5. As to whether this is self-created.
Fails 5-0

Dairy Barn Interpretation

The current owners of the Dairy Barn, Jim and Julie Kucko, were present to receive an interpretation as to having a second business on their property. Polzella's interpretation of the code is that in order to run two separate businesses, the owners would need more acreage.

Julie Kusko, 124 Que Vista West, Horseheads, NY, stated she, along with her husband Jim are the current owners of the Dairy Barn. Before purchasing the property almost five years ago they met

with MaryAnn Balland and Carl Carson. At that time they were told several people had shown interest in buying the barn to operate a business. Kucko's plans were not only to operate it for what it was; due to the large investment, they would need to utilize the rest of the property as well. Kucko said at that time, they were told 'no problem'. Since then, they have been trying to put something in to help with their investment. They cannot run a 6-month business with a 12-month mortgage. Kucko noted some of the ideas she had presented:

a) Indoor and outdoor putt-putt – Recreation was not allowed.

b) Indoor game room, birthday room, etc. – Again, not allowed per zoning

They are now proposing to sell arts, crafts and antiques while having items displayed from local artists. Kucko said she had met with the previous planners, and was never told that the bulk and density schedule would require an additional acre of land. She stated they are not looking to construct another building, but instead to utilize the building they currently own. Kucko then asked what determines minimum lot area for principal use - they still own the entire building. They are not trying to get rich, however they are trying to pay their bills. Julie and Jim both work separate full-time jobs as well as running this business. For the past four years they have put money into it and not taken a penny out of it.

Seely asked if they are proposing to put this business in the same building.

Jim Kucko answered yes; it would be on the other side of the barn.

Seely then asked if the use would be permitted in that area.

Polzella replied yes, however there is only one acre per principal use. As per Section 17.12 of the town code, the primary use now is *standard restaurant*. To add candles and gifts would be adding retail, making it a different principal use.

Seely does not see the need for two acres. Currently it is 1.2 acres. The building sets close to the road, with plenty of parking in the rear.

Polzella said the applicant's next step would be to apply for an area variance at which time the criteria would be reviewed.

Rowe said we need to look at the way the bulk and density is written, instead of going by our own personal opinions. General business use requires 1 acre. Any sales would fall into retail use.

Polzella stated that antiques would fall into its own principal use.

Seely feels we are stretching this a bit. It is not a use variance. In order to make a decision, he would need to see the plans.

Polzella said that is what the planning board would do. Tonight the board is voting on the interpretation only. This has nothing to do with the business itself, but the interpretation. The ice cream is a business use as defined in Section 17.12 Use Table. It would not matter if Kucko wanted two or 10 businesses, more acreage would be required; 1 acre per use.

Rowe reiterated to Kucko and to the board that, according to the Town of Big Flats bulk and density schedule, general use and business use require one acre. Currently, there is a business use of ice cream. Adding another business use would require having another acre. Staff has made a determination that they need 1 acre per use. The applicant would be required to apply for a variance.

The Zoning Board agrees with staff interpretation 5-0.

Rowe, speaking to the applicant, said she could go to the planning board first to ask for a variance, at which time it would come back in front of the ZBA. The ZBA would then have the discussion as to whether it would be approved or denied.

Kucko said the town knew she and her husband had full intentions of utilizing the rest of the property, and were told there were no problems with that.

Rowe stated this is not the first situation that has come before this board where information was given that was not correct.

Kucko said she thought they did what they needed to do by coming to the town prior to purchasing the property. The current supervisor is the same one that was here at that time. She, along with Carl Carson, said it was okay. Kucko stated it is very discouraging; they work full-time, as well as working full time at the Dairy Barn.

Polzella said there is a procedure. Kucko could come into the office and fill out a variance application. This would allow her to know the decision before going forth. The process would take approximately two months. If denied, it you would be left with only one use.

Kucko stated that not even a quarter of that building is currently being used. There is a lot of empty space. She has been told each time she comes her; you can rent it for storage, put a lease sign on it.

Polzella said he would be the first to apologize for the previous planners. The applicants can come in to the office and he would be happy to walk them through the process. We will do our best.

Kucko repeated the need to make use of the rest of the building or the Dairy Barn will not be there any more. She feels they would be better off working their butts off someplace else making more money. For the money they have spent, no one will be able to generate enough money to get their investment out of it. They are at the point of having to decide whether they can utilize the rest of the building or fold it up. If they go too long, another year goes by, and they will not generate any money.

Rowe feels it would be best for Kucko to meet with Polzella to look at all the issues that need to be addressed. Kucko said they have done nothing but improvements from what it was originally. They believe they can make it a huge asset, and a unique place that people would like to come to.

**Motion to adjourn by Clark, seconded by Seely at 8:04pm, Discussion, None,
Motion Carries 5-0.**

Meeting adjourned at 8:05pm

**ZONING BOARD OF APPEALS
MEETING MINUTES
DECEMBER 23, 2008**

**TOWN OF BIG FLATS
COMMUNITY CENTER
ROOM 'D'**

MEMBERS PRESENT: Tom Clark, Don Williams, Harry King, Richard Seely

ABSENT: Joe Rowe

STAFF: Stephen Polzella, Planning Director, Brenda Belmonte, Secretary

GUESTS: Michael Battisti, Rich Gaylord, Joe Battisti, Jon DeGraw

Vice Chairman Clark called the meeting to order at 7:00pm, noting Chairman Rowe was absent.

Minutes

November 24, 2008

**Motion by Willlams, seconded by King, to approve the minutes of November 24, 2008,
Discussion, None, Motion Carries 4-0.**

**RESOLUTION ZBA-22-2008
BATTISTI – AREA VARIANCE DENIED
TAX PARCEL #56.00-1-51**

Resolution by: Seely

Seconded by: Williams

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for an Area Variance on November 10, 2008 and held a public hearing on December 23, 2008; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2008-53, returned the referral to the Town of Big Flats Zoning Board of Appeals with a recommendation for denial; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated December 16, 2008; and

WHEREAS, granting this area variance would provide relief from BFZL 17.16.020, Bulk and Density requirements, specifically “Minimum Lot Area”; and

WHEREAS, on the basis of materials submitted by the applicant on and before December 23, 2008, this board finds criteria #1, BFZL 17.60.120-B, to fail; and

WHEREAS, on the basis of materials submitted by the applicant on and before December 23, 2008, this board finds criteria #2, BFZL 17.60.120-B, to fail; and

WHEREAS, on the basis of materials submitted by the applicant on and before December 23, 2008, this board finds criteria #3, BFZL 17.60.120-B, to fail; and

WHEREAS, on the basis of materials submitted by the applicant on and before December 23, 2008, this board finds criteria #4, BFZL 17.60.120-B, to be a split decision; and

WHEREAS, on the basis of materials submitted by the applicant on and before December 23, 2008, this board finds criteria #5, BFZL 17.60.120-B, to fail; and

NOW, THEREFORE BE IT RESOLVED, for the purposes of SEQRA, this Board has conducted an uncoordinated review of an unlisted action; and

FURTHER RESOLVED, finds and makes a negative declaration of significant environmental impacts for the proposed action based on the review documented in the Staff Report dated December 16, 2008; and

FURTHER RESOLVED, to approve the Area Variance Request by Michael Battisti, 1604 Maple Ave., Elmira, NY 14901, to provide relief from BFZL 17.16.020, Bulk and Density requirements, specifically "Minimum Lot Area".

CARRIED: AYES: Clark

NAYS: Seely, King, and Williams

Dated: Tuesday, December 23, 2008
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

DISCUSSION:

Polzella noted that the planning board, at their December meeting, recommended denial, agreeing with staff that all 5 criteria fail. According to the applicant's response to the criteria, he feels he passes all five.

The board reviewed the criteria:

1. As to whether granting the variance would produce an undesirable change to the character of the neighborhood.

Staff feels the largest issue in granting the variance is that it would allow for any of the 36 possible uses on that property. Clark has looked at the property, and feels only a house could be put there, not a business.

Seely asked for clarification on the allowable uses that would be created.

Polzella explained that any applicant could go forward with any use. A use restriction should not be made.

Clark said the applicant is not planning on anything other than a house.

Polzella noted, for example, one of the uses could be a storage facility; someone could knock down the garage, build a storage facility and rent it out with site plan approval.

Seely, asked if a granted variance would stay with the property.

Polzella said yes, any variance stays with the property, not the applicant.

Williams asked how long the applicant has owned the property and Battisti said since July of 2008. Battisti also stated it would enhance the property.

Seely observed the property and feels a home would not be a detriment. However, he would object to the other uses that would be allowed, and so feels there would be potential for an undesirable change.

Seely, fails; Clark, passes; King, fails; Williams, fails

2. As to whether it could be achieved by some other method.

Staff feels the applicant has other options available. He could request a zoning amendment, which the town is already currently reviewing.

Williams asked if it would be possible for the applicant to obtain more land, and Battisti said not at this time.

Polzella said the planning board agrees this fails because the zoning amendment option is still available.

Seely feels that building a house would be consistent with the neighborhood, although he agrees the applicant has not explored all of his options.

Seely, fails; Clark, fails; King, fails; Williams, fails

3. As to whether the variance is substantial.
This is a 53% request for relief; staff feels it is very substantial.

All fail, 4-0

4. As to whether it would have an adverse affect on the physical or environmental conditions in the neighborhood.

Polzella noted we have already heard a concern about drainage. Staff feels, because of the 36 uses, there is a whole range of impacts that we cannot discern at this time.

Clark feels there would not be 36 uses used here: perhaps one or two with the house.

Polzella stated that a storage facility would be a highly likely use – in that case there would be potential for steel buildings, impervious surfaces, etc.

Williams is concerned we would be setting precedence.

Seely, fails; Clark, passes; King, passes; Williams, fails

5. As to whether the alleged difficulty was self-created.

Polzella stated records show the land was purchased in July of 2008. On June 17, 2008 the applicant was advised this was a non-conforming lot. There was a previous demo permit for a house and garage, as well as a permit to put up the new garage. There are no records showing approval was given to build a new home. Again, the applicant was advised before purchasing the property that this was a non-buildable lot, and an area variance would be required.

Seely, deny; Clark, deny; King, deny; Williams, deny.

Polzella noted 4 criteria failed, and 1 was a draw.

Discussion:

Clark said he looked at the neighborhood; there are 37 properties in the area and perhaps six of them sit on three acres or more. Clark said the applicant has a bigger lot than most. This is not a rural residential area we are looking at.

Polzella said we are doing a zoning amendment; this type of situation is one that has been targeted to correct in bulk and density. The potential amendment would also restrict the use, allowing for smaller lots, but restricted to single family uses. The potential amendment could also alleviate most of the reasons this applicant has failed. That is one of the reasons staff is recommending denial of this request.

Williams feels the applicant should lobby for the zoning amendment, as granting this request would set a precedence.

Clark stated his opinion that the property already had a home on it, so precedence would not be set.

Clark called the roll:

Seely voted to deny, agreeing the other uses allowed would be disturbing, and the applicant has not explored his other options. Clark, passes; King, deny; Williams, deny.

Polzella stated the motion does fail, however, a consultant has been hired to look at the zoning, and there is a potential that this would come into compliance with an amendment. The town board has already initiated the rezoning process, so a petition is not an option at this time. The applicant should participate in the zoning update process.

Motion to adjourn at 7:32pm by Seely, seconded by Williams, Discussion, None, Motion Carries 4-0.

Meeting adjourned at 7:33pm